Senate bill 1000 as an amendment to the Wagner Labor Act; to the Committee on Education.

2291. By Mr. MOTT: Petition signed by citizens of Oregon, protesting against the passage of any legislation returning prohibition to the District of Columbia; to the Committee on the District of Columbia.

2292. By Mrs. NORTON: Petition of the Legislature of the State of New Jersey, memorializing the Congress of the United States to refuse enactment of legislation which would becloud the sovereign rights of the State of New Jersey in its submerged lands; to the Committee on the Public Lands.

2293. By Mr. PFEIFER: Petition of the Board of Harbor Commissioners of the City of Long Beach, Calif., opposing the adoption of Senate Joint Resolution No. 24; to the Committee on the Public Lands.

2294. Also, petition of the Julius Friedlaender Co., Columbus, Ga., opposing the passage of House bill 57, the Cotton Net Weight Act; to the Committee on Agriculture.

2295. Also, petition of the Brooklyn Paper Stock Corporation, Brooklyn, N. Y., opposing the Fulmer net weight bill (H. R. 57); to the Committee on Agriculture.

2296. Also, petition of the Washington Committee for Aid to China, Washington, D. C., concerning neutrality legislation; to the Committee on Foreign Affairs.

2297. Also, petition of the Brotherhood of Railroad Trainmen, Metropolitan Lodge, No. 598, New York City, concerning the Lea railroad rehabilitation bill; to the Committee on Interstate and Foreign Commerce.

2298. Also, petition of the United States Printing & Lithograph Co., Brooklyn, N. Y., concerning the Wagner Labor Relations Act; to the Committee on Labor.

2299. By Mr. SCHIFFLER: Petition of John S. Hall, clerk of the house of delegates, Charleston, W. Va., urging that the Congress of the United States appropriate moneys for the construction of a dam on the Little Kanawha River; to the Committee on Appropriations.

2300. By Mr. TINKHAM: Petition of residents of Massachusetts, protesting against the proposed return of prohibition to the District of Columbia; to the Committee on the District of Columbia.

2301. By Mr. TREADWAY: Petition of citizens of Shelburne Falls and Buckland, Mass., urging the enactment of legislation prohibiting the advertising of liquor by press and radio; to the Committee on Interstate and Foreign Commerce.

2302. By the SPEAKER: Petition of K. S. Trimble, of San Francisco, Calif., petitioning consideration of their resolution with reference to Works Progress Administration deficiency appropriation; to the Committee on Appropriations.

SENATE

TUESDAY, APRIL 4, 1939

(Legislative day of Monday, April 3, 1939)

The Senate met at 12 o'clock meridian, on the expiration of the recess.

The Chaplain, Rev. ZeBarney T. Phillips, D. D., offered the following prayer:

O Saviour of the world, at whose coming the springs of our humanity were purified, and by whose life the ways of God were justified to men: Help us at this holy season to unbar our hearts to the wondrous things Thou dost impart. Man of Sorrows, Fountain of Love, give to us all in our every endeavor the deftness of love, and in all our deliberations the wisdom of love; and may we truly share with Thee Thy love made perfect through suffering. We pray for all who are trouble-tossed and weary, for all in whose homes there is sorrow and woe, for all those broken beneath the blows of adversity, for the transgressor scourged at length by his own deeds, for all prisoners and captives, and for all who are desolate and oppressed.

Let Thine arms of everlasting mercy be about us still and evermore, Thou blessed Burden Bearer, 'till the last lost sheep of the wilderness is brought back home and every note of sadness turned to joy. Amen.

THE JOURNAL

On request of Mr. BARKLEY, and by unanimous consent, the reading of the Journal of the proceedings of the calendar day Monday, April 3, 1939, was dispensed with, and the Journal was approved.

CALL OF THE ROLL

Mr. MINTON. I suggest the absence of a quorum.

The VICE PRESIDENT. The clerk will call the roll.

The Chief Clerk called the roll, and the following Senators answered to their names:

Adams	Donahey	La Follette	Radcliffe
Andrews	Downey	Lee	Reed
Ashurst	Ellender	Lodge	Reynolds
Austin	Frazier	Logan	Russell
Bankhead	George	Lucas	Schwartz
Barbour	Gerry	Lundeen	Schwellenbach
Barkley	Gillette	McCarran	Sheppard
Bilbo	Glass	McKellar	Shipstead
Bone	Green	McNary	Smathers
Borah	Guffey	Maloney	Smith
Brown	Gurney	Mead	Stewart
Bulow	Harrison	Miller	Taft
Burke	Hatch	Minton	Thomas, Okla.
Byrd	Hayden	Murray	Thomas, Utah
Byrnes	Herring	Neely	Townsend
Caraway	Hill	Norris	Tydings
Chavez	Holman	Nye	Vandenberg
Clark, Mo.	Hughes	O'Mahoney	Wagner
Connally	Johnson, Calif.	Overton	Wheeler
Danaher	Johnson, Colo.	Pepper	White
Davis	King	Pittman	Wiley

Mr. MINTON. I announce that the Senator from West Virginia [Mr. HOLT] is absent from the Senate because of a death in his family.

The Senator from North Carolina [Mr. BAILEY], the Senator from Illinois [Mr. LEWIS], and the Senator from Missouri [Mr. TRUMAN] are detained on important public business.

The Senator from Idaho [Mr. CLARK], the Senator from Indiana [Mr. VAN NUYS], and the Senator from Massachusetts [Mr. WALSH] are unavoidably detained.

Mr. MCNARY. I announce that the senior Senator from Kansas [Mr. CAPPER] is absent because of a death in his family.

The VICE PRESIDENT. Eighty-four Senators have answered to their names. A quorum is present.

RETIREMENT OF EMPLOYEES IN THE CANAL ZONE

Mr. CLARK of Missouri. Mr. President, on March 14 the Senate passed Senate bill 1215, to amend the Canal Zone Code. It is a bill recommended by the War Department, having to do only with two very meritorious cases in the Panama Canal Zone. Almost at the same time the House passed House bill 3577. The Senate bill was referred to the Committee on Merchant Marine and Fisheries in the House, and the House bill was referred to the Committee on Interoceanic Canals in the Senate.

Inasmuch as the bills are identical and each of them has already passed the House in which it originated, and each embodies a meritorious proposition which is recommended by the War Department, I ask unanimous consent that the Committee on Interoceanic Canals be discharged from the further consideration of House bill 3577, and further ask for the present consideration of the bill.

The VICE PRESIDENT. Is there objection to the request of the Senator from Missouri for the discharge of the committee? The Chair hears none, and the Committee on Interoceanic Canals is discharged from the further consideration of House bill 3577.

The Senator from Missouri asks unanimous consent for the present consideration of the bill. Is there objection?

There being no objection, the bill (H. R. 3577) to amend the Canal Zone Code was considered, ordered to a third reading, read the third time, and passed, as follows:

Be it enacted, etc., That the first paragraph of subsection (b) of section 94 of title 2, Canal Zone Code, as amended by section 2 of the act of June 24, 1936 (49 Stat. 1904), is amended to read as follows:

"(b) Any employee to whom this article applies who shall have served for a total period of not less than 5 years, and who, before

becoming eligible for retirement under the conditions defined in section 92 of this title, shall have become totally disabled for useful and efficient service in the grade or class of position occupied by the employee, by reason of disease or injury not due to vicious habits, intemperance, or willful misconduct on the part of the employee, shall upon his own application or upon request or order of the Governor of the Panama Canal, be retired on an annuity computed in accordance with the provisions of section 96 of this title: *Provided*, That proof of freedom from vicious habits, intemperance, or willful misconduct for a period of more than 5 years next prior to becoming so disabled for useful and efficient service shall not be required in any case; and the claim of any employee which was or would have been disallowed under this section by reason of the requirement of such proof with respect to a longer period than 5 years shall upon request of the applicant be reinstated and shall thereupon be redetermined under the provisions of the section as herein amended: *Provided further*, That such claim is now on file with the Civil Service Commission or is executed within 6 months from the enactment of this act.

PETITIONS AND MEMORIALS

The VICE PRESIDENT laid before the Senate petitions of sundry citizens of Brooklyn, N. Y., praying for an additional appropriation of $150,000,000 for the Works Progress Administration, as recommended by the President, which were referred to the Committee on Appropriations.

He also laid before the Senate a letter from Gordon B. Jackson, of Brooklyn, N. Y., relative to his ideas and designs for aircraft to promote safety in the air, which, with the accompanying papers, was referred to the Committee on Commerce.

He also laid before the Senate a letter from Potenciana Casuga, of San Fernando, La Union, P. I., praying that a pension be granted her as the widow of a former soldier, Jose B. Nisperos, which was referred to the Committee on Pensions.

Mr. GEORGE presented petitions of sundry citizens of the State of Georgia praying for the enactment of legislation to prohibit the advertising of alcoholic beverages by press and radio, which were referred to the Committee on Interstate Commerce.

Mr. HOLMAN (for himself and Mr. McNARY) presented memorials, signed by over 14,000 citizens of the State of Oregon, remonstrating against the shipment of arms and war materials to Japan for use in operations against China, which were referred to the Committee on Foreign Relations.

Mr. REED presented petitions of 19 citizens of Ellsworth County, 19 citizens of Kiowa County, 116 citizens of Wilson County, 94 citizens of Riley County, 49 citizens of Reno County, 37 citizens of Rush County, 394 citizens of Montgomery County, 80 citizens of Elk County, 53 citizens of Geary County, 88 citizens of Grant County, 53 citizens of Marion County, 440 citizens of McPherson County, 141 citizens of Stafford County, 51 citizens of Stevens County, 78 citizens of Sherman County, 68 citizens of Trego County, 282 citizens of Shawnee County, 123 citizens of Morris County, 105 citizens of Nemaha and Brown Counties, 29 citizens of Morton County, 545 citizens of Osborne and Smith Counties, 78 citizens of Mitchell County, 193 citizens of Ottawa County, 85 citizens of Norton County, 92 citizens of Wyandotte County, 26 citizens of Crawford County, 23 citizens of Woodson County, 74 citizens of Wabaunsee County, 91 citizens of Ness County, 824 citizens of Rice County, 135 citizens of Republic County, 79 citizens of Russell County, 75 citizens of Osage County, 59 citizens of Rawlins County, 29 citizens of Pawnee County, 81 citizens of Pratt County, 63 citizens of Phillips County, 78 citizens of Barber County, 124 citizens of Butler County, 121 citizens of Bourbon County, 19 citizens of Chase County, 70 citizens of Clay County, 132 citizens of Clark County, 74 citizens of Cherokee County, 26 citizens of Cowley County, 34 citizens of Cloud County, 38 citizens of Cheyenne County, 691 citizens of Crawford County, 105 citizens of Douglas County, 85 citizens of Dickinson County, 1,101 citizens of Sedgwick County, 118 citizens of Johnson County, 104 citizens of Linn County, 320 citizens of Lyon County, 311 citizens of Jackson County, 55 citizens of Jewell County, 127 citizens of Hodgeman County, 59 citizens of Harvey County, 116 citizens of Jefferson County, and 143 citizens of Ford County, all in the State of Kansas, praying for the enactment of legislation to prohibit the advertising of alcoholic beverages by press and radio, which were referred to the Committee on Interstate Commerce.

Mr. KING presented a resolution of the Hawaii Equal Rights Commission, favoring amendment of the so-called Ellender sugar bill (S. 69) so as to eliminate therefrom any and all discriminatory provisions, existing or potential, against the Territory of Hawaii, its people or industries, which was referred to the Committee on Agriculture and Forestry.

He also presented a resolution of the Hawaii Equal Rights Commission, favoring an increase in the appropriation for the Hawaiian Agricultural Experiment Station from $55,000 to $80,000, which was referred to the Committee on Appropriations.

Mr. NYE presented petitions of sundry citizens of the State of North Dakota praying for the enactment of legislation to prohibit the advertising of alcoholic beverages by press and radio, which were referred to the Committee on Interstate Commerce.

He also presented the following concurrent resolution of the Legislature of North Dakota, which was referred to the Committee on the Judiciary:

House Concurrent Resolution 132

Concurrent resolution relating to an amendment to the enabling act of February 22, 1889

Be it resolved by the House of Representatives of the State of North Dakota (the senate concurring therein):

Whereas a considerable portion of the lands, granted by the enabling act, approved February 22, 1889, to the State of North Dakota for educational purposes, and lying in the southwestern part of the State, are suitable primarily only for grazing purposes; and

Whereas such grazing lands are not now, and probably never will be, worth the minimum price of $10 per acre, fixed as the minimum price for the sale of lands so granted and, therefore, cannot be sold and disposed of by the State for the benefit of the permanent school funds; and

Whereas by the terms and conditions of section 11 of said act, as amended by act of Congress, approved June 25, 1938, such grazing lands may be leased in quantities not exceeding one section to any one person or company for terms not longer than 10 years; and

Whereas experience has shown that it is impracticable to lease said grazing lands upon such terms, thereby depriving said permanent school funds of any applicable benefit from said lands; and

Whereas there are now in existence several cooperative grazing associations, the members of which are bona fide residents of the State of North Dakota, engaged in the principal occupation of the raising of livestock, who would lease said grazing lands in large quantities from the State, if such leases could lawfully be made: Now, therefore, be it

Resolved by the House of Representatives of the State of North Dakota (the senate concurring), That the Congress of the United States be memorialized to further amend section 11 of the enabling act, approved February 22, 1889, to provide that such portions of the lands, granted by said act to the State of North Dakota for educational purposes, as are suitable primarily only for grazing purposes, may be sold only to the United States Government at a price not less than $1 per acre; and further providing that such grazing lands may be leased to bona fide cooperative grazing associations in quantities not exceeding 20 sections to any one such cooperative grazing association.

ASSOCIATED FARMERS OF CALIFORNIA

Mr. JOHNSON of California. Mr. President, I have received a telegram from the Associated Farmers of California. I am not familiar with the facts therein set forth; but because I believe in the sacred American right of self-defense, and because I believe every man is entitled to his day in court and his right to be heard upon any charges that may be made against him, I ask unanimous consent that the telegram may be printed in the body of the RECORD at this point.

The VICE PRESIDENT. Is there objection? The Chair hears none.

The telegram referred to is as follows:

SAN FRANCISCO, CALIF., *April 4, 1939.*

Hon. HIRAM W. JOHNSON,
Senate Building, Washington, D. C.:

This supplements previous wire. On March 31 a number of serious charges were made concerning the Associated Farmers of California in a dispatch sent out from Washington by Bruce Catton, N. E. A. Service Washington correspondent. This disptach gives as its source a Senate Civil Liberties Committee report to be filed with the Senate immediately. These charges cannot go unanswered.

The Associated Farmers have been given no hearing by the La Follette committee and no opportunity to present their side of the case. Indeed, they have not even been advised of any

charges, or what conclusions have been reached concerning them by the La Follette committee, except in the dispatch above mentioned, which expressly states that "no part of the report has yet been disclosed."

Decency and fair dealing, to say nothing of the basic principle of American law expressly guaranteeing a fair trial, should dictate that the Associated Farmers have an opportunity to prove or disprove the charges mentioned in the dispatch, if, as, and when made.

So that Congress and the public may be advised, we herewith set forth our position, which we respectfully request be read into the CONGRESSIONAL RECORD. We shall take up the charges as made and meet them.

First, it is charged that the Associated Farmers of California is a front organization for railroads, public utilities, and big business interests, and dominated by them. We reply and can prove that the Associated Farmers is in fact an association of California farmers, some 30,000 in number, all of whom pay regular dues, beginning at $1 per year, into the association's funds. It is not dominated by the groups mentioned; on the contrary, the directors and officers are elected by the local farmer memberships in each county.

Second, it is charged that we operate to break up labor organizations and prevent labor organizations from taking hold among the agricultural workers of the west coast. We reply that the Associated Farmers of California do not oppose organized labor. Contrary to the statement made in the dispatch, we have no objection to organization of rural workers. We do object, and strongly, to domination of agricultural workers by certain metropolitan union leaders, such as Harry Bridges. We do object to attempts to control the food supply of the State by such men. We do oppose sabotage and destruction of crops by anyone supposedly acting in the name of organized labor. We believe that the serious problems confronting agriculture in California can and should be worked out within the existing fabric of the Government, and we therefore oppose those who seek to cripple and destroy our present economic and social structure. The Associated Farmers do this at the behest of no group and act solely on their own convictions.

Third, it is charged that we cooperate with sheriffs' offices, county prosecutors, and State officials. We frankly admit that the Associated Farmers do cooperate with the sheriffs' offices and the other authorities duly elected and vested with the power to enforce the law. This is in accordance with the democratic tradition and our duty as citizens. If there has been any denial of civil liberties by these officials, they are accountable under the law.

Fourth, the charge is made that huge private arsenals are maintained, including a sizable warehouse of submachine guns and sawed-off shotguns, for use in case of labor trouble. Our answer is that this is pure fabrication. The Associated Farmers has never spent $1 for or acquired from any source any guns, ammunition, tear gas, or other weapons.

Undoubtedly, mistakes have been made by members of the Associated Farmers. Men who see their crops destroyed before their eyes, gasoline poured on lettuce, fruit rot on trees, deliveries to market halted on the public highways of the State by lawless men acting in the name of labor do not always act reasonably. We point out, however, that farmers under such circumstances have usually been subjected to great provocation. We seek to correct our mistakes. We want to solve the agricultual problems of the State on a basis that is fair for all. These problems cannot be solved on a name-calling basis such as has been initiated by the personnel of the La Follette committee. They can be solved only by an objective consideration of the problems and around the council table.

Duplicate to Senator SHERIDAN DOWNEY requesting he cooperate with you.

HAROLD E. POMEROY,
Executive Secretary, Associated Farmers of California, Inc.

MESSAGE FROM THE HOUSE

A message from the House of Representatives, by Mr. Chaffee, one of its reading clerks, announced that the House had passed without amendment the following bills of the Senate:

S. 917. An act authorizing the Library of Congress to acquire by purchase, or otherwise, the whole, or any part, of the papers of Charles Cotesworth Pinckney and Thomas Pinckney, including therewith a group of documents relating to the Constitutional Convention of 1787, now in the possession of Harry Stone, of New York City;

S. 1019. An act to authorize the Secretary of War to pay certain expenses incident to the training, attendance, and participation of the equestrian and modern pentathlon teams in the Twelfth Olympic Games; and

S. 1363. An act to repeal subsection (4) of subsection (c) of section 101 of the Agricultural Adjustment Act of 1938.

The message also announced that the House had agreed to the concurrent resolution (S. Con. Res. 1) authorizing the holding of ceremonies in the rotunda in connection with the presentation of a statue of the late Will Rogers.

The message further announced that the House had passed the bill (S. 964) creating the Arkansas-Mississippi Bridge Commission; defining the authority, power, and duties of said commission; and authorizing said commission and its successors and assigns to construct, maintain, and operate a bridge across the Mississippi River at or near Friar Point, Miss., and Helena, Ark., and for other purposes, with amendments, in which it requested the concurrence of the Senate.

The message also announced that the House had passed the following bills and joint resolutions, in which it requested the concurrence of the Senate:

H. R. 2200. An act to dispense with particular allegations as to renunciation of allegiance in petitions for naturalization and in the oath of renunciation of foreign allegiance, by omitting the name of "the prince, potentate, state, or sovereignty" of which the petitioner for naturalization is a subject or citizen;

H. R. 2751. An act to repeal sections 3711, 3712, and 3713 of the Revised Statutes which relate to the purchase in the District of Columbia of coal and wood for public use, and for other purposes;

H. R. 3065. An act to amend Public Law No. 370, Seventy-fourth Congress, approved August 27, 1935 (49 Stat. 906);

H. R. 3221. An act to authorize the Secretary of War to provide for the sale of aviation supplies and services to aircraft operated by foreign military and air attachés accredited to the United States, and for other purposes;

H. R. 3230. An act to amend the statutes providing punishment for transmitting threatening communications;

H. R. 3811. An act to provide for the appraisal of the pneumatic-mail-tube systems in New York and Boston;

H. R. 3946. An act to authorize the attendance of the Marine Band at the United Confederate Veterans' 1939 Reunion at Trinidad, Colo., August 22, 23, 24, and 25, 1939, and for other purposes;

H. R. 4087. An act to amend an act entitled "An act for making further and more effectual provision for the national defense, and for other purposes," approved June 3, 1916, as amended by the act of June 4, 1920, so as to confer on the commanding general, General Headquarters Air Force, the same retirement privileges now enjoyed by chiefs of branches;

H. R. 4243. An act granting the consent of Congress to the State of Indiana to construct, maintain, and operate a free highway bridge across the Wabash River at or near Peru, Ind.;

H. R. 4370. An act authorizing the city of Chester, Ill., to construct, maintain, and operate a toll bridge across the Mississippi River at or near Chester, Ill.;

H. R. 4432. An act granting the consent of Congress to the city of Warren, Ohio, to construct, maintain, and operate a free footbridge over Mahoning River, near Stiles Street NW., Warren, Ohio;

H. R. 4527. An act to extend the times for commencing and completing the construction of a bridge across the Mississippi River at or near Rock Island, Ill., to a place at or near the city of Davenport, Iowa;

H. R. 4771. An act limiting working hours of pneumatic tube system employees to 8 in 10 hours a day;

H. R. 4772. An act to provide time credits for substitutes in the pneumatic-tube service;

H. R. 4785. An act to provide a differential in pay for night work to pneumatic-tube system employees in the Postal Service;

H. R. 4786. An act to extend the provisions of the 40-hour law to pneumatic tube system employees in the Postal Service;

H. R. 4830. An act to amend the act approved April 27, 1937, entitled "An act to simplify accounting";

H. J. Res. 133. Joint resolution authorizing the President of the United States of America to proclaim October 11, 1939, General Pulaski's Memorial Day for the observance and commemoration of the death of Brig. Gen. Casimir Pulaski;

H. J. Res. 224. Joint resolution to authorize the painting of the signing of the Constitution for placement in the Capitol Building; and

H. J. Res. 225. Joint resolution amending the joint resolution entitled "Joint resolution providing for the construction and maintenance of a National Gallery of Art," approved March 24, 1937.

REPORTS OF COMMITTEE ON EDUCATION AND LABOR

Mr. THOMAS of Utah, from the Committee on Education and Labor, to which was referred the bill (S. 2021) to authorize the Department of Labor to continue to make special statistical studies upon payment of the cost thereof, and for other purposes, reported it without amendment and submitted a report (No. 247) thereon.

Mr. MURRAY, from the Committee on Education and Labor, to which was referred the bill (S. 835) to provide compensation for disability or death resulting from injury to employees of contractors on public buildings and public works, reported it without amendment and submitted a report (No. 249) thereon.

BILLS AND JOINT RESOLUTION INTRODUCED

Bills and a joint resolution were introduced, read the first time, and, by unanimous consent, the second time, and referred as follows:

By Mr. GREEN:

S. 2057. A bill to amend the Social Security Act to authorize the appropriation of larger sums to be used for the purpose of assisting the States in the administration of their unemployment compensation laws; to the Committee on Finance.

By Mr. NYE:

S. 2058. A bill relating to promotion contests carried on through the use of the mails or the facilities of interstate or foreign commerce; to the Committee on Post Offices and Post Roads.

S. 2059. A bill authorizing a grant to the city of Fargo, N. Dak., of an easement in connection with the construction of water and sewer systems; to the Committee on Commerce.

By Mr. THOMAS of Oklahoma:

S. 2060. A bill to prohibit the importation of flags, standards, colors, and ensigns of the United States; to the Committee on the Judiciary.

By Mr. GURNEY:

S. 2061. A bill for the relief of William Hillock; to the Committee on Claims.

By Mr. TOWNSEND:

S. 2062. A bill granting a pension to Lena C. Thoroughgood (with accompanying papers); to the Committee on Pensions.

By Mr. MEAD:

S. 2063. A bill making appropriations for public-works projects, and authorizing the carrying out of such projects; to the Special Committee to Investigate Unemployment and Relief.

By Mr. NEELY:

S. 2064. A bill granting an increase of pension to Mary A. Stagg; to the Committee on Pensions.

By Mr. BARKLEY:

S. 2065. A bill to provide for the regulation of the sale of certain securities in interstate and foreign commerce and through the mails, and the regulation of the trust indentures under which the same are issued, and for other purposes; to the Committee on Banking and Currency.

By Mr. REYNOLDS:

S. 2066. A bill to provide for the use of scientific tests to determine degree of intoxication of motor-vehicle operators in the District of Columbia, and for other purposes; to the Committee on the District of Columbia.

By Mr. MINTON (for Mr. VAN NUYS):

S. 2067. A bill for the relief of Leslie J. Frane; to the Committee on Claims.

S. 2068. A bill to authorize the presentation of a Distinguished Service Cross to Harry L. Kast; and

S. 2069. A bill for the relief of Nelson H. Rogers; to the Committee on Military Affairs.

S. 2070. A bill granting an increase of pension to Emma Chapman;

S. 2071. A bill granting a pension to Adele Evans;

S. 2072. A bill granting an increase of pension to Commodore P. Fuller;

S. 2073. A bill granting a pension to Catherine Keyser;

S. 2074. A bill granting a pension to Grace V. Lawrence;

S. 2075. A bill granting a pension to Mary E. Michaud;

S. 2076. A bill granting a pension to Mary E. Ramer;

S. 2077. A bill granting an increase of pension to Mary A. Swander;

S. 2078. A bill granting a pension to Worth Wareham; and

S. 2079. A bill granting a pension to Eliza Jane Wilkinson; to the Committee on Pensions.

By Mr. SHIPSTEAD:

S. J. Res. 112. Joint resolution authorizing and directing the Comptroller General of the United States to certify for payment certain claims of grain elevators and grain firms to cover insurance and interest on wheat during the years 1919 and 1920 as per a certain contract authorized by the President; to the Committee on Agriculture and Forestry.

HOUSE BILLS AND JOINT RESOLUTIONS REFERRED

The following bills and joint resolutions were severally read twice by their titles and referred as indicated below:

H. R. 2200. An act to dispense with particular allegations as to renunciation of allegiance in petitions for naturalization and in the oath of renunciation of foreign allegiance by omitting the name of "the prince, potentate, state, or sovereignty" of which the petitioner for naturalization is a subject or citizen; to the Committee on Immigration.

H. R. 2751. An act to repeal sections 3711, 3712, and 3713 of the Revised Statutes, which relate to the purchase in the District of Columbia of coal and wood for public use, and for other purposes; to the Committee on Expenditures in the Executive Departments.

H. R. 3065. An act to amend Public Law No. 370, Seventy-fourth Congress, approved August 27, 1935 (49 Stat. 906); to the Committee on Foreign Relations.

H. R. 3221. An act to authorize the Secretary of War to provide for the sale of aviation supplies and services to aircraft operated by foreign military and air attachés accredited to the United States, and for other purposes; and

H. R. 4087. An act to amend an act entitled "An act for making further and more effectual provision for the national defense, and for other purposes," approved June 3, 1916, as amended by the act of June 4, 1920, so as to confer on the commanding general, General Headquarters Air Force, the same retirement privileges now enjoyed by chiefs of branches; to the Committee on Military Affairs.

H. R. 3230. An act to amend the statutes providing punishment for transmitting threatening communications;

H. R. 3811. An act to provide for the appraisal of the pneumatic mail tube systems in New York and Boston;

H. R. 4771. An act limiting working hours of pneumatic tube system employees to 8 in 10 hours a day;

H. R. 4772. An act to provide time credits for substitutes in the pneumatic-tube service;

H. R. 4785. An act to provide a differential in pay for night work to pneumatic tube system employees in the Postal Service; and

H. R. 4786. An act to extend the provisions of the 40-hour law to pneumatic tube system employees in the Postal Service; to the Committee on Post Offices and Post Roads.

H. R. 3946. An act to authorize the attendance of the Marine Band at the United Confederate Veterans' 1939 Reunion at Trinidad, Colo., August 22, 23, 24, and 25, 1939, and for other purposes; to the Committee on Naval Affairs.

H. R. 4243. An act granting the consent of Congress to the State of Indiana to construct, maintain, and operate a free highway bridge across the Wabash River at or near Peru, Ind.;

H. R. 4370. An act authorizing the city of Chester, Ill., to construct, maintain, and operate a toll bridge across the Mississippi River at or near Chester, Ill.;

H. R. 4432. An act granting the consent of Congress to the city of Warren, Ohio, to construct, maintain, and operate a

free footbridge over Mahoning River, near Stiles Street NW., Warren, Ohio; and

H. R. 4527. An act to extend the times for commencing and completing the construction of a bridge across the Mississippi River at or near Rock Island, Ill., to a place at or near the city of Davenport, Iowa; to the Committee on Commerce.

H. R. 4830. An act to amend the act approved April 27, 1937, entitled "An act to simplify accounting"; to the Committee on Appropriations.

H. J. Res. 133. Joint resolution authorizing the President of the United States of America to proclaim October 11, 1939, General Pulaski's Memorial Day for the observance and commemoration of the death of Brig. Gen. Casimir Pulaski; to the Committee on the Judiciary.

H. J. Res. 224. Joint resolution to authorize the painting of the signing of the Constitution for placement in the Capitol Building; to the Committee on the Library.

AMENDMENT TO AGRICULTURAL DEPARTMENT APPROPRIATION BILL

Mr. CONNALLY submitted an amendment intended to be proposed by him to House bill 5269, the Agricultural Department appropriation bill, 1940, which was referred to the Committee on Appropriations, ordered to be printed, and to be printed in the RECORD, as follows:

On page 89, after line 19, to insert the following:

"To enable the Secretary of Agriculture to further carry out the provisions of section 32, as amended, of the act entitled 'An act to amend the Agricultural Adjustment Act, and for other purposes,' approved August 24, 1935, and subject to all provisions of law relating to the expenditure of funds appropriated by such section, $60,000,000. Such sum shall be immediately available and shall be in addition to, and not in substitution for, other appropriations made by such section or for the purpose of such section: *Provided*, That not in excess of 25 percent of the funds herein made available may be devoted to any one agricultural commodity."

ADDITIONAL REPORT OF A COMMITTEE

Mr. BARKLEY, from the Committee on Banking and Currency, to which was referred the bill (S. 2065) to provide for the regulation of the sale of certain securities in interstate and foreign commerce and through the mails, and the regulation of the trust indentures under which the same are issued, and for other purposes, reported it without amendment and submitted a report (No. 248) thereon.

ENTRANCE FEES FOR GREAT SMOKY MOUNTAINS NATIONAL PARK—ADDRESS BY SENATOR REYNOLDS, ETC.

[Mr. REYNOLDS asked and obtained leave to have printed in the RECORD a radio address by himself on the occasion of the twelfth anniversary of radio station WWNC, Asheville, N. C., with reference to the Great Smoky Mountains National Park, together with other matters on the same subject, which appear in the Appendix.]

WORK RELIEF AND RELIEF—ADDRESS BY JOHN F. COLLINS

[Mr. GREEN asked and obtained leave to have printed in the RECORD a radio address on the subject of work relief and relief, delivered by Hon. John F. Collins, mayor of Providence, R. I., on March 29, 1939, which appears in the Appendix.]

COURT OF APPEALS FOR ADMINISTRATION—ADDRESS BY J. E. SEBREE

[Mr. LOGAN asked and obtained leave to have printed in the RECORD an address delivered at Washington, D. C., by J. E. Sebree on the proposed Court of Appeals for Administration, which appears in the Appendix.]

INDIAN NEW DEAL

[Mr. CHAVEZ asked and obtained leave to have printed in the RECORD an editorial published in the Saturday Evening Post of April 1, 1939, entitled "Indian New Deal," which appears in the Appendix.]

THE FOREIGN DEBTS

[Mr. DANAHER asked and obtained leave to have printed in the RECORD an editorial published in the Boston Post of April 1, 1939, with reference to the foreign debts, which appears in the Appendix.]

EXPORT SUBSIDY ON COTTON

[Mr. GEORGE asked and obtained leave to have printed in the RECORD editorials from the New York Times, the Baltimore Sun, and the Memphis Commercial Appeal opposing the export subsidy on cotton, which appear in the Appendix.]

REFUGEE CHILDREN—NEWSPAPER EDITORIALS, ETC.

[Mr. WAGNER asked and obtained leave to have printed in the RECORD a statement of a proposed plan, together with a number of editorials from newspapers in the United States supporting proposed legislation for the admission to the United States of 20,000 refugee children under 15 years of age, which appear in the Appendix.]

RECIPROCAL TAXATION OF FEDERAL AND STATE OFFICERS AND EMPLOYEES

The Senate resumed the consideration of the bill (H. R. 3790) relating to the taxation of the compensation of public officers and employees.

The VICE PRESIDENT. The question is on the amendment offered by the Senator from Michigan [Mr. BROWN].

Mr. BROWN. Mr. President, I understand that the amendment now before the Senate is the amendment relative to the taxation of the salaries of Federal judges.

The VICE PRESIDENT. The Senator is correct.

Mr. BARKLEY. Mr. President, will the Senator yield to me?

Mr. BROWN. I yield to the Senator from Kentucky.

Mr. BARKLEY. I assume that this bill will not require very long discussion today. I wish to say to Senators that at the conclusion of the consideration of the bill now before the Senate I hope the Senate may go into executive session to dispose of the nomination of Mr. Douglas to the Supreme Court; and that after the nomination is disposed of we may then have the calendar called for the consideration of unobjected-to bills.

I simply wish to serve notice that that will be the program.

Mr CONNALLY. Mr. President——

The VICE PRESIDENT. The Chair has recognized the Senator from Michigan.

Mr. BROWN. I understand that the amendment has been submitted.

The VICE PRESIDENT. The amendment has been stated, as the Chair understands.

Mr. CONNALLY. I rise, because I desire slightly to modify the amendment. I now offer it with the modification which I send to the desk.

The VICE PRESIDENT. Is the Chair to understand that the Senator from Texas is offering an amendment to the amendment offered by the Senator from Michigan?

Mr. CONNALLY. No; the Senator from Texas on yesterday offered his own amendment. He is now seeking to modify it.

The VICE PRESIDENT. The amendment of the Senator from Texas is not now pending. Without objection, the amendment yesterday offered by the Senator from Texas will be modified in accordance with his suggestion. Is there objection? The Chair hears none.

Mr. BROWN. Mr. President, unless there is objection of some kind to the amendment I offered yesterday, I ask that it be put to a vote.

The VICE PRESIDENT. The question is on agreeing to the amendment offered by the Senator from Michigan [Mr. BROWN].

Mr. GEORGE (and other Senators). Let it be stated.

The VICE PRESIDENT. The amendment will be stated for the information of the Senate.

The CHIEF CLERK. On page 2, after line 10, it is proposed to insert the following:

SEC. 3. Section 22 (a) of the Internal Revenue Code is amended by adding at the end thereof a new sentence to read as follows: "In the case of judges of courts of the United States who took office on or before June 6, 1932, the compensation received as such shall be included in gross income."

On page 6, after line 3, it is proposed to insert the following:

SEC. 210. In the case of the judges of the Supreme Court, and of the inferior courts of the United States created under article III of the Constitution, who took office on or before June 6, 1932, the compensation received as such shall not be subject to income tax under the Revenue Act of 1938 or any prior revenue act.

Mr. AUSTIN. Mr. President, will the Senator from Michigan yield for a question?

Mr. BROWN. I yield.

Mr. AUSTIN. I should like to ask the Senator from Michigan whether the effect of the amendment designated as section 3, amending section 22 (a) of the Internal Revenue Code, is to abolish an express immunity therein contained.

Mr. BROWN. Yes; the Senator is correct in his statement. The effect of the amendment is that all Federal judges, whether appointed before or after 1932, will be subjected to Federal income tax.

Adverting for a moment to section 210, the second paragraph of the amendment, it provides in substance that no tax shall be levied upon such judges prior to January 1, 1938; but that exception does not apply to judges appointed since 1932.

Mr. AUSTIN. Mr. President, will the Senator yield for another question?

Mr. BROWN. Yes.

Mr. AUSTIN. As to judges appointed since 1932, is it the intention of the Senator to have them taxed retroactively on salaries from the time of their appointment to the present time?

Mr. BROWN. I will say to the Senator that they are now subject to Federal income taxation. They have been taxed since 1932. It has been done through amendments to appropriation bills by revenue acts, which have provided in effect that the compensation of Federal judges appointed since 1932 is the sum of the salary paid minus the tax.

Mr. AUSTIN. Will the Senator yield for one further question?

Mr. BROWN. Certainly.

Mr. AUSTIN. Should the bill be amended as proposed, and then become a law, does the Senator believe that its effect would be to waive the immunity on salaries of all Federal judges after a certain date?

Mr. BROWN. Yes.

Mr. AUSTIN. What is that date?

Mr. BROWN. January 1, 1939, with respect to judges appointed prior to 1932. Do I make that clear to the Senator?

Mr. AUSTIN. That is clear.

Mr. BROWN. And the bill grants no immunity as to judges who have been heretofore taxed, judges who were appointed since 1932. They will be taxed just as they were prior to the time the bill, if enacted, becomes law.

Mr. AUSTIN. Mr. President, just one further question, if the Senator will yield for that purpose. Is it true that House bill 3790 deals particularly with express immunities from taxation, rather than with the implied immunities concerning which the Supreme Court recently rendered a decision?

Mr. BROWN. I will say to the Senator from Vermont that this bill does both. In the first place, it deals with the implied immunities which arose from the so-called immunity rule growing out of the case of McCulloch against Maryland, the Maryland Bank case, decided over 100 years ago. As amended, it also deals with the express immunity granted by the third article of the Constitution, which states, in substance, that the salaries of Federal judges shall not be diminished during their term office, so the bill covers both the implied immunity as applied to all Federal officials, Senators and Representatives, and members of the Cabinet, and so forth, and the express immunity which it is claimed was granted by article III of the Constitution, relative to Federal judges.

Mr. AUSTIN. Mr. President, one further question: Does the Senator from Michigan understand that if House bill 3790 should not be enacted and become the law there would still be a question to be determined by the courts respecting express immunities?

Mr. BROWN. Yes.

Mr. AUSTIN. Namely, because the decisions heretofore did not determine the question relating to express immunities, but determined only the question with respect to implied immunities?

Mr. BROWN. I think I shall have to make a brief statement in order to answer the question of the Senator from Vermont.

Since the question has arisen, I think the Senate ought to know that this bill will give the Supreme Court an opportunity to overrule the case of Evans against Gore, which quite definitely held, I think about 1919, that a Federal judge's salary was not subject to a Federal income tax. I will say further to the Senator that the question may possibly be reached in a case now pending before the Supreme Court of the United States, the so-called Woodrough case, which involves a judge whose salary is in this situation:

He was appointed a district judge prior to 1932. After 1932 he was elevated to the circuit court of appeals. He is now contending that because of that peculiar situation his salary, as a judge of the circuit court of appeals, should be immune because he was a judge prior to 1932. That case is before the Court.

I understand there are about 34 judges of district and circuit courts of the United States who are contending that they are immune from taxation despite the arrangement which the Congress has made through its appropriation bills to which I have referred. This amendment will give the Court an opportunity once and for all to determine the entire question, and I do not think it can be determined in the thirty-odd cases which are now before the courts.

Mr. AUSTIN. Mr. President, will the Senator yield?

Mr. BROWN. I yield.

Mr. AUSTIN. I wish to make the observation that in voting for these amendments and in voting for the bill I do not desire to have the Court conclude that it was my intention in any degree to afford a presumption of constitutionality to the amendments or to the bill itself. I want it distinctly understood that I think it is expedient for the welfare of the country to have the bill passed and have the Court, if necessary, pass upon its constitutionality, but I want that done as a matter of law, and I want it done without any strength being gained from the fact that the Congress has enacted these amendments or this proposal into law.

Mr. BROWN. The Senator from Vermont for himself may certainly make that reservation; but there is no question, under the accepted practice here and in the courts, that the fact that we pass the bill will lend to it a presumption of constitutionality.

Mr. AUSTIN. Mr. President, will the Senator yield for a further observation?

Mr. BROWN. I yield.

Mr. AUSTIN. I venture to say that perhaps that question of presumption is affected by the rule of majority. I say "perhaps" it is. But I have observed that courts before this have regarded an act of Congress as not creating a presumption when there was expressed in the debates which led up to the vote a reservation of any intention to create such a presumption. I think in recent cases the Court has given respect to such a doubt which arose in the debate in Congress and has treated the enactment of the legislation as the only practical way of submitting to the Court the question of constitutionality.

Mr. BURKE. Mr. President, will the Senator yield?

Mr. BROWN. I yield.

Mr. BURKE. I question very much in my own mind the constitutionality of the section relating to judges. I expect to support the bill, but I join the Senator from Vermont in saying that at least so far as my own vote is concerned I do not commit myself as accepting the view that this removal of the express immunity is valid under the Constitution.

Mr. BROWN. Mr. President, if there are no further questions, I do not intend to discuss the constitutionality of the pending amendment further, but if any Senator desires to discuss it, I am ready to endeavor to answer the arguments.

Mr. MINTON. Mr. President, will the Senator yield?

Mr. BROWN. I yield.

Mr. MINTON. I should not want the expressions of the Senator from Vermont and the Senator from Nebraska to be

any indication at all that I accept their point of view. If the bill shall pass and go to the Supreme Court, I want it to go, so far as I am concerned, with all the presumptions of constitutionality in its favor it could possibly have, in order that the Supreme Court may in the ordinary course, with such presumption of constitutionality in its favor, pass upon the bill, and overrule the decision in Evans against Gore, which case I think was erroneously decided.

Mr. CONNALLY. Mr. President, in connection with the matter of the right of the Federal Government to tax the salaries of its own judges, it seems to me there is still another important question involved in the bill, namely, the question of whether or not the States under this so-called reciprocal principle will have the right to tax the salaries of Federal judges.

It is perfectly apparent that if the Federal Government has no power to tax Federal judges' salaries, the States cannot tax them. Yet it is proposed in the pending bill that we carry out the principle of mutuality, by which the Federal Government will tax the salaries of all State officers, and the States, under section 3 of the bill, will have a similar right to tax the salaries of all Federal officers within their jurisdiction.

If we are to carry out any such theory in good faith, we ought to include Federal judges; and I have an amendment pending to section 3, page 2, to make it clear that the United States Government does consent to the States taxing the salaries of Federal judges. One of the purposes of the amendment is to make it possible for the Supreme Court to reexamine and to repass upon the question which was raised in the case of Evans against Gore, because it seems to me that, if we are to adopt this system, we ought to go the whole way; we ought to act in good faith toward the States. If we are to demand that their officials pay taxes to the Federal Government, then we ought to be willing for the States to tax the salaries of Federal officials.

It will be recalled that the decision in the case of Evans against Gore was based upon the theory that under that article of the Constitution which provides that the salary of a judge shall not be diminished it cannot be diminished even by a tax. I have never thought that decision to be sound; but the Court rendered the decision, which had the force of law. My reason for saying that I never believed it was a sound decision is that I do not believe that the levying on a judge of a nondiscriminatory tax which applies to all other individuals with respect to the same amount of income which they receive from similar sources is an invasion of that protection which the Constitution gives, that a judge's salary shall not be diminished.

If the original judgment in Evans against Gore shall stand, neither the Federal Government, so far as salaries paid prior to 1932 are concerned, nor a State, ever can levy any tax upon the salaries of Federal judges, because if the Federal Government cannot tax them because of the provision of the Constitution, it is also a protection to them as against State taxation.

In its recent opinions the Supreme Court has departed from what I supposed all have understood to be the rule as to the immunity of Federal officers from State taxation, and the immunity of State officers from Federal taxation.

Mr. NORRIS. Mr. President, I hope the Senator will modify his statement that we have all been in agreement. As in the case of the Senator from Texas, we do not agree with the decision, but the decision was made, and as loyal citizens we abide by the decision.

Mr. CONNALLY. In the interest of accuracy of statement I recognize the wisdom of the suggestion of the Senator from Nebraska. What the Senator from Texas probably should have said was that we have all generally accepted that theory. So far as the Senator from Texas is concerned, he has always thought that the Supreme Court, away back in the case of McCulloch against Maryland had clearly laid down the policy that neither sovereignty could tax the instrumentalities of the other sovereignty. When the Supreme Court about 2 months ago in the Gerhardt case laid down a rule drawing a distinction between essential State officers and nonessential State officers, I thought that was a sound opinion. I think it perfectly sound because the nonessential officer evidently was not in the contemplation of the Constitution makers. But in the case which was decided only a few days ago, the Supreme Court wipes out all barriers whatever to Federal taxation of State officials.

Mr. BROWN. Mr. President, will the Senator yield?

Mr. CONNALLY. I yield.

Mr. BROWN. I agree with the Senator's criticism of what was there done; but it was a situation which the Court could not very well avoid, because the question that was presented to them in the Gerhardt case was whether or not the employee was engaged in an essential or nonessential governmental activity.

Mr. CONNALLY. That is true.

Mr. BROWN. And the Court did not have before them the question which they later had before them in the O'Keefe case, as to the soundness of the immunity rule as applied to Federal and State employees.

Mr. CONNALLY. I thank the Senator; but I still think that the Court could have very properly followed the Gerhardt case and held that the Home Owners' Loan officer was not an essential governmental employee. But that is beside the question. No matter what the occasion, the Supreme Court held that the Federal Government could tax the salary of every State officer, and that means a judge, that means a Governor, that means a member of a legislature.

My contention is that if we are going to carry out the theory of mutuality we should not say to the States, "We will tax your Governor, we will tax your legislators, we will tax your judges, but you shall not tax our judges."

Mr. NORRIS. Mr. President, will the Senator yield?

Mr. CONNALLY. I yield.

Mr. NORRIS. I agree with the Senator. I think his position is correct. However, I wish to ask if the Senator really thinks the amendment is necessary?

Mr. CONNALLY. I do.

Mr. NORRIS. It cannot do any harm.

Mr. CONNALLY. It cannot do any harm. I think it is necessary because the language of the bill on page 2, line 13, is as follows: "personal service as an officer or employee of the United States." It might be held that a judge was not an officer of the United States. The courts have held that a Senator is not an officer of the United States, that a Representative is not an officer of the United States. So some judge with a fine-spun theory might hold that a judge was not an officer of the United States. However, without an express declaration I am afraid the court would not reexamine the case of Evans against Gore, and I want the Supreme Court to reexamine that case.

Mr. BORAH. Mr. President, will the Senator yield?

Mr. CONNALLY. I yield.

Mr. BORAH. Is not that question now before the Court to be determined?

Mr. CONNALLY. No; I do not think so, I shall say to the Senator. I shall say why I do not think it is. The case of Evans against Gore was decided in 1919, and then we did not undertake to tax judges for some years. In 1932, however, we put an amendment in the revenue bill providing that all judges thereafter appointed should pay the tax. The issue which is before the Court today is in the case of a judge who was in office at the time the Evans against Gore decision was in force, and therefore was held not to be taxable. He was promoted to circuit-court judge after 1932. Having been appointed to that position, the Internal Revenue Department has undertaken to collect a tax on his salary as circuit-court judge, to which position he was appointed after the law became effective. But he contends that because he was a judge before 1932 the mantle of immunity covers him, even though he was appointed to another judicial position after 1932. I doubt very much whether the Court will go into the fundamental question as to whether the tax is a reduction of salary. If it is a diminution of his salary, no State can tax him, notwithstanding our saying that the States may do so.

Mr. NORRIS. Mr. President, will the Senator yield?

Mr. CONNALLY. I yield.

Mr. NORRIS. In the particular case of Judge Woodrough, I suppose it is conceded by the Government that if he had not been appointed to the circuit court of appeals and still retained his office as a district judge, his salary would not have been taxable under the law of Congress.

Mr. CONNALLY. That is correct.

Mr. NORRIS. Because he was appointed before that law was passed.

Mr. CONNALLY. That is correct.

Mr. NORRIS. I have an open mind on the subject, but in view of the fact that he was appointed circuit judge after the law was passed, I do not believe the fact that he had been a district judge before and was then immune from taxation has anything to do with the subsequent appointment, admittedly made after that law was passed.

Mr. CONNALLY. I say to the Senator that I thoroughly agree with him, because when he was appointed circuit judge he was appointed to a new office.

Mr. NORRIS. Of course, that is so; and the fact that he had been district judge before had nothing to do with the case.

Mr. CONNALLY. He was appointed by the President to a new office. He was confirmed by the Senate to a new position. Of course, his status then was entirely different from that which he occupied prior to that time.

Mr. BURKE. Mr. President, will the Senator yield?

Mr. CONNALLY. I yield.

Mr. BURKE. I do not know on what theory the case was presented, but it was presented persuasively enough so that the lower court upheld Judge Woodrough's contention, and the Government thought there was sufficient doubt about the question to take it to the Supreme Court.

Mr. BROWN. Mr. President, will the Senator yield?

Mr. CONNALLY. I yield.

Mr. BROWN. I am informed by the counsel for the Joint Committee on Internal Revenue Taxation that the lower court agreed with the contention that because Judge Woodrough had been a district judge he was still a judge. I cannot understand that reasoning, but that was the basis of the court's decision. The court did not go into the question of whether or not the immunity rule as stated in the Constitution originally, and as upheld in Evans against Gore, applied. That question was not before the Court.

Mr. CONNALLY. No.

Mr. BROWN. I wish to say to the Senator while I am on my feet that I am in complete agreement with what he says to the effect that every Federal judge should be subject to State income taxation, and I am perfectly willing to accept the Senator's amendment to make it certain that Federal judges may be so taxed by the State authorities.

Mr. CONNALLY. I thank the Senator.

Mr. BROWN. I wish to say very briefly, if the Senator will permit me, that I am not in agreement, however, with his statement that there is the same reciprocal immunity existing as between State and Federal officials, and that such immunity is just as strong and just as powerful with respect to State officials as it is with respect to Federal officials.

I take the view—and I think it has been the view of the courts through all the years upon this proposition that the Federal Constitution is supreme; that it is the law of Maryland, or of Texas, or of Michigan, just as it is the law of the United States. I take the view that Congress may grant immunity to its officials, to certain of its employees, and that such immunity need not be a reciprocal immunity. The State of Texas has two very able representatives in the Senate and 21 Representatives in the House of Representatives, but the State of Michigan has no representative in the legislature of Texas, and what Texas does by way of taxation of Federal officials affects me. I have no control over that. I am perfectly willing that Federal officials should be subjected to income taxation on the part of the government of the State of Texas, but I think we have the right to grant or withhold immunity, and I do not think it necessarily needs to be reciprocal.

Mr. TAFT. Mr. President, will the Senator yield?

Mr. CONNALLY. Will the Senator from Ohio permit me to reply first to the Senator from Michigan, and then I shall yield to him?

Mr. TAFT. Certainly.

Mr. CONNALLY. Mr. President, with some of the statements of the Senator from Michigan I heartily agree. But when he says that the Federal Constitution is supreme the statement ought to be subject to the limitation that it is supreme within the particular province of the Federal Government, and that when it comes to State powers, in matters properly within the jurisdiction of a State, such powers are just as supreme as are the Federal powers within the Federal sphere. Otherwise there could be no dual system. If whatever the Congress does or whatever the Federal Government does overrides the action of the States, then we no longer have a dual system, but a Federal system, an entirely federated centralized Government. I know that the powers of the States through the process of economic change have been gradually diminished, but I cannot agree with the theory that anything the Federal Government may do is superior to and overrides the authority of the States.

The Senator may be correct in his statement that the Federal Government could withhold from the States the right to tax Federal salaries, but in doing so he is clinging onto a fragment of the policy which the bill denounces. The bill denounces the idea that these sovereignties are independent of each other, and it is only upon that theory that we can withhold the right of the States to tax Federal salaries. Upon what other theory can we maintain that position? Only upon the doctrine of might—only upon the doctrine of force.

Mr. BROWN. I disagree with the Senator that it is based on the doctrine of might or force. It is based on the compact that was made between the States and the Federal Government at the time the Constitution was adopted. I think the Senator expresses the situation perfectly when he says that the Federal Government is supreme in that sphere of powers which were granted to the Federal Government, one of which was the taxing power. The immunity rule did not arise out of any action on the part of the Congress of the United States. It did not arise out of any legislation enacted by Congress. It arose out of judicial construction of the Constitution itself. The first time the rule was announced in McCulloch against Maryland, and in all the important constitutional cases since that time, the Court has been careful to point out that the Federal Government's power was supreme in the matters over which the Constitution gave the Federal Government control, and one of those powers is the power of taxation.

The Senator suggests that by so stating I deny the very basis of the bill. I want it to be understood that I consider the immunity granted the State officers a matter of grace on the part of the Federal Government; that we are granting this power on the part of the State to tax Federal officials because we think that it should be so, not that we must do so.

I think the Court has quite definitely and repeatedly said that the power to grant immunity is a power which rests in the Federal Government, within reasonable limitations. The Senator knows that there is nothing now in the legislation which Congress has passed in 150 years which exempts Federal property from taxation by the State governments. There is no specific exemption of a post office. There is no specific exemption of a fort. There is no specific exemption of a naval landing field. However, by reason of the immunity rule which was announced, as well as the plain common sense of the thing, such instrumentalities ought not to be taxed.

There are other activities and instrumentalities which I think should be investigated, so that the immunity rule might be definitely established. To what does it apply and to what does it not apply? I think that is a matter which should be

the subject of congressional investigation, because the Supreme Court has done things to the immunity rule in the cases decided in 1939.

Mr. NORRIS. Mr. President——

The PRESIDING OFFICER (Mr. GEORGE in the chair). Does the Senator from Michigan yield to the Senator from Nebraska?

Mr. BROWN. I yield.

Mr. NORRIS. I should like to make a suggestion to the Senator from Michigan, as well as to the Senator from Texas. I think this debate is exceedingly interesting, but it is directed to a constitutional question which may take us days to settle. It is all on a question not before the Senate. The pending amendment, upon which I think we were just about to vote, is an amendment offered by the Senator from Michigan. The amendment of the Senator from Texas [Mr. CONNALLY] is not pending.

Mr. CONNALLY. It is lying on the table. It will come up in a moment.

Mr. NORRIS. That does not make it pending. May we not dispose of the pending amendment and then proceed?

Mr. CONNALLY. The Senator from Texas will not annoy the Senator from Nebraska much longer.

Mr. TAFT. Mr. President, will the Senator yield?

Mr. CONNALLY. The Senator from Michigan had the floor. Did the Senator from Michigan conclude?

Mr. BROWN. Yes.

Mr. CONNALLY. Mr. President, in reply to the Senator from Michigan, I will state that there is really no substantial difference as to some phases between the view of the Senator from Michigan and my own. However, I wish to suggest that the fact that the States have never undertaken to tax Federal post offices, courthouses, Army posts, and Federal property within the States all goes back to the supposed immunity of each of the governments from taxation by the other. However, that immunity has been largely wiped out by the decision of the Supreme Court as to officers.

Mr. MINTON. Mr. President, will the Senator yield?

Mr. CONNALLY. I yield.

Mr. MINTON. Then, the Senator does not accept the position taken by the Senator from Michigan that it is an act of grace on the part of the Federal Government which permits the States now to tax the salaries of Federal judges and officers?

Mr. CONNALLY. Not under the Supreme Court decision. I think it is a matter of right. If we are to carry out in good faith the philosophy announced in the case decided by the Supreme Court a few days ago, then the States ought to have, and we ought graciously to acknowledge that they possess, the power to tax every Federal officer or judge within their jurisdiction.

Mr. MINTON. The only thing that prevented them from doing it up to a few days ago was the implied immunity in Collector against Day and Dobbins against Commissioner.

Mr. CONNALLY. Exactly.

Mr. MINTON. The implied immunity has now been wiped out?

Mr. CONNALLY. Exactly.

Mr. MINTON. So it is not a matter of grace. It is a matter of right, because there is no longer any constitutional inhibition in the opinion of the Supreme Court.

Mr. CONNALLY. I agree with the expressed view.

Mr. BROWN. Mr. President, may I say a word to the Senator from Indiana? Both Mr. Justice Stone and Mr. Justice Frankfurter in the O'Keefe case expressly stated that the question whether or not the Congress might clothe its employees or its officials with immunity was a question for another day. Of course, the Court did not pass upon the question in that case, because the question was not before the Court. However, if we are to maintain our faith, if we are to carry out in good faith the new philosophy announced by the Supreme Court, we ought to accord to the States as to our officers the same right which we demand as to their officers.

Mr. MINTON. Mr. President, will the Senator yield?

Mr. CONNALLY. I yield.

Mr. MINTON. If a State were discriminating against Federal officers, the Federal Government might withhold the immunity.

Mr. CONNALLY. Of course, the decision of the Supreme Court is based upon the theory of a nondiscriminatory tax; and if a State should levy a higher rate upon Federal officers than upon similar officers of the State or upon private individuals, I am sure the Court would strike down the act as being beyond the power of the State.

Mr. TAFT. Mr. President, will the Senator yield?

Mr. CONNALLY. I yield.

Mr. TAFT. What concerns me about the Senator's amendment is that I am in favor of permitting the taxation of the salaries of Federal judges; but if the amendment is inserted at the point suggested, and a similar insertion is not made in line 11, does not that imply an exemption of State judges?

Mr. BROWN. The Senator is correct in his statement. The amendment should be included in both places, if necessary.

Mr. TAFT. There is also another fact. If the amendment of the Senator is adopted, it seems to me to exempt Senators and Representatives, because the Senator himself has said that the word "officer" is not construed to include judges. Probably it will not include Senators and Representatives.

Mr. BROWN. I am sure that is not the intention of the Senator from Texas.

Mr. CONNALLY. I cannot at the moment put my finger on the decision which holds that a Member of Congress is not a Federal officer.

Mr. MINTON. It is the Newberry case, is it not?

Mr. CONNALLY. When the income-tax was under consideration in the House of Representatives, and it was charged over the country that Members of Congress had been exempted, the gentleman from Iowa [Mr. TOWNER] delivered a very exhaustive and learned discourse upon whether or not the word "officer" included Members of Congress. We exempted Federal officers, but he held that the word "officer" did not include Senators and Representatives. The Government took that view of the matter, and Members of Congress have been taxed ever since the law went into effect.

Mr. TAFT. The amendment should include Senators and Representatives as well as judges.

Mr. CONNALLY. I am willing that the States should tax them. I am dealing now only with judges.

Mr. TAFT. I am asking whether or not the effect of the Senator's amendment, by admitting that "officer" does not include judges, is necessarily to exempt Senators and Representatives.

Mr. CONNALLY. I will say to the Senator that the theory of the decision was that we were elected by the people of the States, and that we were not selected by the Federal Government itself. There are some fine-spun distinctions between a Federal officer, selected by the Federal Government, and one in the status of a Senator or Representative. Of course the Senator from Ohio will observe that I have already stated that if we are to tax the salaries of State officers, every Federal salary, including those of Senators and Representatives, should be taxed. If we tax members of the legislature of a State, the State ought to have authority to tax the Members of the National Legislature.

Mr. President, I believe that is all I care to say. I wish to make it clear that we intend that the States shall have the right to tax Federal judges, so that the Supreme Court will be required to reexamine the fundamental question whether or not a nondiscriminatory tax is in fact a diminution of salary under the constitutional provision.

Mr. BROWN. Mr. President, I have no objection to the Senator's amendment. I think it might clarify the situation. I agree with the suggestion made by the Senator from Ohio, that the same language should go into section 1, and I hope the Senator from Texas will modify his amendment to that effect.

Mr. CONNALLY. As I have said Representatives and Senators are now taxed by the Federal Government and should be taxed by the States as Federal officers.

Mr. BROWN. I, too, am interested in judges. I do not agree with the construction placed upon the bill by the Senator from Ohio with regard to Senators and Representatives, because as a matter of fact they have been taxed for a great many years under similar language, and that practice has whatever sanction time has given to it.

Mr. BORAH. Mr. President, I understood the Senator to say that he is supporting this measure, not because we have the right to pass it as a matter of right, but on some theory of grace. Will the Senator make that point clear? I am having a difficult time to put myself in a frame of mind to vote for the bill at all, not on a constitutional ground, but even if we have the power I do not think it is a wise policy to exercise that power.

Mr. BROWN. I hope the Senator will vote for the bill.

As I stated to the Senator yesterday, the bill arises because of the recent decision in the Gerhardt and O'Keefe cases. The Senator from Rhode Island [Mr. GREEN] first introduced a bill to prevent retroactive taxation of salaries of State officers. This bill covers that need among others. It seemed to the committee that it was necessary to define the immunity rule with respect to Federal employees and State employees, because the rule has never been defined. There is now no legislation upon the subject. The taxation which is imposed under the Gerhardt and the O'Keefe cases arose out of a situation in which no one thought that any such persons were subject to the income-tax laws of the respective Governments, State and Federal. My committee, which investigated the subject and reported to the Finance Committee, believed that State and Federal officials should be subject to the income-tax laws. We so advised the Finance Committee, and the bill was reported.

The Senator refers to what I said as to the power of the States to tax Federal officers being a matter of grace. The immunity rule as developed in McCulloch against Maryland and sustained by various cases since that time, including the recently decided cases this year, clearly recognize the supreme power of the Federal Government in matters of taxation; but they leave undecided the question of whether or not the superior Federal authority could clothe its officials with immunity without granting a reciprocal immunity to the States. In the matter of granting to the States the right to tax Federal officials, a different situation arises. That power is conferred, at least in this bill, as a matter of reciprocity and as a matter of grace to the States. I think we could deny that right. I think that, within reasonable limits, we could tax State officials and deny to the States the right to tax Federal officials. Let me apply the statement I have just made to a practical situation. I think we could tax the Governor of the State of New York through the income tax; and I think we could deny to the State of New York the right to tax a Senator of the United States. I think that illustration makes the issue clear.

Mr. BORAH. Mr. President, am I correct in assuming that the decision of the Supreme Court rendered a few days ago determined the proposition that a tax upon a State official as well as a tax upon a Federal official in neither case tended to burden or impair sovereignty, and, therefore, it was legitimate to assess a tax on the salaries of such officers? The Court went no further than that.

Mr. BROWN. If the Senator will permit me, I will say that they placed a limitation upon that proposition. They said, "We are not deciding the question as to whether or not the Congress might clothe employees and officers of the United States with immunity." I do not want Congress to grant such immunity, and that is evidenced by the fact that I am advocating this bill; but that power still remains in the Congress. The Court expressly stated that they were not in the case referred to deciding the proposition, although repeatedly heretofore thay have held that Congress could grant immunity to its instrumentalities.

Mr. BORAH. Exactly; they did not decide that question. The only question they decided was the question which I stated a moment ago, that is that the laying of a tax upon salaries did not tend to impair or burden or interfere with the sovereignty whose officer was taxed.

Mr. BROWN. That such action did not impair sovereignty to any appreciable degree. I do not think that modification is necessary.

Mr. CONNALLY. Mr. President, will the Senator from Michigan yield to me there?

Mr. BROWN. I yield.

Mr. CONNALLY. I may say to the Senator from Idaho that, as I recall the decision, the court did not repudiate the theory that neither sovereignty could interfere with the other, but it did hold that a nondiscriminatory tax on the salary of an officer was not a burden on the exercise by the sovereignty of its power. That is what was held.

Mr. BORAH. Exactly. As I have said, the court did not in any way modify the decision of Chief Justice Marshall in the case of McCulloch against Maryland. The only proposition decided by that case was that there could not be an interference with one sovereignty by another. The court did not undertake to modify that rule at all. They simply said that a tax on a salary is not an interference with the sovereignty of the Government whose officer may have his salary taxed. Therefore, there is no modification of the principle laid down in McCulloch against Maryland.

Mr. BROWN. I will say to the Senator that the immunity rule does not rest alone on McCulloch against Maryland. Collector against Day was another case.

Mr. BORAH. That was the other side of McCulloch against Maryland.

Mr. BROWN. I understand that, but that was a case which also laid down the immunity rule; it laid down the proposition that the Federal Government could not tax a State judge. The Supreme Court has reversed that rule by their decision in the O'Keefe case.

Mr. BORAH. They did reverse the case of Collector against Day in part.

Mr. BROWN. But I will say to the Senator that everyone assumed after the case of Collector against Day that the rule in that case was a part of the immunity rule and that State judges were immune from Federal taxation by reason of it. That part of the immunity rule has not only been modified, but has been abrogated without legislative action.

Mr. BORAH. I assume that since the decision of a few days ago we have a right to pass this bill, but I am assuming it on the theory that the Supreme Court settled the salary question both with reference to the National and State sovereignty. I do not assume that the Court has modified its original holding in any respect whatever, except as to the Day case and two or three other cases which were salary cases. Therefore, we have a right to pass the bill.

Mr. BROWN. There is no question about that.

Mr. BORAH. But whether it is wise to do so or not is another question. I do not believe it is wise. Let each sovereignty tax its own officials. Let us preserve with jealousy the integrity of the two sovereign ties.

Mr. HARRISON. Mr. President, may we have a vote now on the amendment which is pending?

The PRESIDING OFFICER. The question is on the amendment offered by the Senator from Michigan [Mr. BROWN].

The amendment was agreed to.

Mr. CONNALLY. I offer the amendment as modified which is now on the desk. I understand the Senator from Michigan is willing to accept it as modified.

The PRESIDING OFFICER. The amendment, as modified, will be stated.

The CHIEF CLERK. On page 2, line 13, after the word "of", it is proposed to insert "or as a judge or officer of any court of."

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Texas as modified.

The amendment, as modified, was agreed to.

Mr. CONNALLY. I offer a further amendment. After the word "service", in line 13, I move to insert the words "as a United States Senator or Member of the House of Representatives, or."

The PRESIDING OFFICER. The clerk will state the amendment.

Mr. CONNALLY. Mr. President, I have not the amendment in writing. I will withhold it for a few moments; the Senate can meanwhile go on with some other amendment, and we can revert to my amendment later.

Mr. HARRISON. Mr. President, I think it would be better to act on the amendments as they are proposed.

The PRESIDING OFFICER. Will the Senator from Texas kindly state his amendment again?

Mr. CONNALLY. Mr. President, I thought I would withhold the amendment for a few moments and return to it later.

The PRESIDING OFFICER. The bill is still before the Senate and open to amendment.

Mr. BROWN. Mr. President, in the amendment which was offered and adopted yesterday, known as sections 208 and 209, my attention has been called to a situation which it seems to me requires a slight amendment. The amendment which was adopted yesterday makes an exception relating to employees of a corporation a majority of whose stock is owned by or on behalf of the United States. The counsel of the Reconstruction Finance Corporation has called our attention to the fact that in a few instances the R. F. C. own a majority of the total stock of certain banks. Therefore, the word "voting" should be inserted before the word "stock" in line 6 of section 208, and the word "voting" should be inserted before the word "stock" in the second line from the bottom of the page.

Mr. AUSTIN. A parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. AUSTIN. I observe that section 207 seems to be the last section in the bill as printed. Is the Senator from Michigan referring to House bill 3790?

The PRESIDING OFFICER. The Chair understands that the Senator from Michigan is referring to an amendment which was adopted to House bill 3790 yesterday. Without objection, the vote by which the amendment which was agreed to yesterday will be reconsidered, and the amendment now offered by the Senator from Michigan to the amendment will be stated.

The CHIEF CLERK. In section 208 before the word "stock" and in section 209 before the word "stock", in the line next to the last, to insert the same word, it is proposed to insert the word "voting", so that sections 208 and 209 will read:

SEC. 208. No collection of any tax (including interest, additions to tax, and penalties) imposed by any State or local taxing authority on the compensation, received before January 1, 1939, for personal service as an officer or employee of the United States or any agency or instrumentality thereof (except a corporate agency or instrumentality the majority of the voting stock of which is not owned by or on behalf of the United States) shall be made after the date of the enactment of this act.

SEC. 209. This title shall not apply with respect to any officer or employee of a State, or any political subdivision thereof, or any agency or instrumentality of any one or more of the foregoing, after the Secretary of the Treasury has determined and proclaimed that it is the policy of such State to collect from any individual any tax, interest, additions to tax, or penalties, on account of compensation received by such individual prior to January 1, 1939, for personal service as an officer or employee of the United States or any agency or instrumentality thereof. In making such determination the Secretary of the Treasury shall disregard the taxation of officers and employees of any corporate agency or instrumentality the majority of the voting stock of which is not owned by or on behalf of the United States.

Mr. AUSTIN. Mr. President——

Mr. BROWN. Mr. President, I am sending to the Senator from Vermont a copy of the amendment so that he may understand it. I will inquire if the Senator was present when I made a short statement concerning the amendment?

Mr. AUSTIN. I was present, but, not knowing what it was to which the Senator referred, I did not understand what he said.

Mr. BROWN. The amendment is necessary because the Reconstruction Finance Corporation holds a majority of all stock—that is, preferred and common—in certain banks. Such banks are now excepted from the provisions of this proposed act. We want to make certain that the employees of such banking institutions will pay income taxes. Therefore it is proposed to insert the word "voting" before the word "stock," which will eliminate the R. F. C. stock in the consideration of what is a majority of the stock involved.

Mr. AUSTIN. Mr. President, these amendments are to me very confusing because of the form in which they are set forth.

Section 208 starts out with the words—

No collection of any tax (including interest, additions to tax, and penalties) imposed by any State or local taxing authority—

And so forth; and concludes with the words—

shall be made after the date of the enactment of this act.

That normally would mean an immunity—an exemption from taxation. I do not see that his proposal clearly accomplishes the objective of which the Senator speaks.

Mr. BROWN. The section 208, I will say to the Senator from Vermont, refers to taxes levied prior to January 1, 1939. That is the retroactive feature of the bill.

Mr. AUSTIN. Mr. President, that considerably clarifies the matter. If the effect of section 208 is to prevent the collection, and to make firm an immunity before January 1, 1939, of the persons and corporations named in the section, then I have no objection to it. Is that its purpose?

Mr. BROWN. That is the purpose; but the Senator recognizes that we do not want to exempt bank employees and bank officials, who have been taxed for many years, and that is the reason for the exception that is contained within the parentheses in section 208, before the word "shall." Those persons should not be declared to be tax exempt. They are employees of national banks.

Mr. AUSTIN. Are there institutions and corporations in which there are employees of two masters; namely, the employees of the private institution called the bank in one illustration, and employees of the Federal institution to which the Senator referred? Is that the situation?

Mr. BROWN. That is the distinction which the sentence contained within the parentheses seeks to bring out. The employees of corporations like the Home Owners' Loan Corporation, the stock of which is entirely held by the United States, are not to be taxed prior to January 1, 1939; but national banks have been declared by the Congress and by the courts to be instrumentalities of the United States. We do not want to exempt their employees from taxes that were levied prior to January 1, 1939, and this amendment clears up that situation.

Mr. AUSTIN. I must confess that I think the language is very unfortunate.

Mr. BROWN. I will say that while I might claim some credit for the idea, the language is that of the expert draftsmen for the Joint Committee on Internal Revenue Taxation and the legislative counsel of the Senate and the House. I think it legally accurate and necessary.

Mr. AUSTIN. I am entirely in agreement with the objective of the Senator from Michigan, but I confess that this language is not clear to me.

The PRESIDING OFFICER. The question is on agreeing to the amendment offered by the Senator from Michigan [Mr. BROWN].

The amendment was agreed to.

Mr. CONNALLY. Mr. President, I offer the amendment which I send to the desk.

The PRESIDING OFFICER. The amendment offered by the Senator from Texas will be stated.

The CHIEF CLERK. On page 2, line 13, after the word "service", it is proposed to insert the following:

as a United States Senator or Member of the House of Representatives, or.

The PRESIDING OFFICER. The question is on agreeing to the amendment offered by the Senator from Texas.

Mr. BROWN. I have no objection to the amendment.

The amendment was agreed to.

Mr. AUSTIN. Mr. President, I should like to inquire as to the effect of the last proposal. Does it add anything to the bill?

Mr. BROWN. I will say to the Senator from Vermont that I think the bill as originally drafted includes judges, Representatives in Congress, United States Senators, and all officers and employees of the Government of the United States. The Senator from Texas calls attention to the fact, I believe, that it was once held that a Senator of the United States was not an officer of the United States within the meaning of a certain criminal statute; and he wants to make sure that a tax is to be levied upon all Members of Congress and upon all Federal judges. My attitude is that I am willing to accept any amendment which makes certain the objective we all seek.

The PRESIDING OFFICER. The bill is still before the Senate and open to further amendment.

Mr. GURNEY. Mr. President, I offer the amendment which was presented by me on March 23.

The PRESIDING OFFICER. The amendment will be stated.

The CHIEF CLERK. It is proposed to add to the bill a new section, to read as follows:

SEC. —. That effective on the thirtieth day after the day of enactment of this act section 3412 (c) (2) of the Internal Revenue Code is amended to read as follows:

"(2) The term 'gasoline' means (A) all products commonly or commercially known or sold as gasoline (including casinghead and natural gasoline), benzol, benzene, or naphtha, regardless of their classifications or uses; and (B) any other liquid of a kind prepared, advertised, offered for sale, or sold for use as, or used as, a fuel for the propulsion of motor vehicles, motorboats, or airplanes; except that it does not include any of the foregoing mixed with 10 percent or more of anhydrous ethyl alcohol produced from annual agricultural crops grown in the continental United States and so denatured as to exempt it from the tax imposed by law upon distilled spirits, does not include any of the foregoing (other than products commonly or commercially known or sold as gasoline) sold for use otherwise than as a fuel for the propulsion of motor vehicles, motorboats, or airplanes, and otherwise than in the manufacture or production of such fuel, and does not include kerosene, gas oil, or fuel oil."

Mr. GURNEY obtained the floor.

Mr. LODGE. Mr. President, if the Senator will yield, I suggest the absence of a quorum.

Mr. HARRISON. Mr. President, will the Senator from Massachusetts withhold that suggestion for one moment?

Mr. LODGE. I withhold it.

Mr. HARRISON. I appeal to the Senator from South Dakota not to insist on his amendment in the case of this bill. I assure the Senator that in some form or other a revenue bill will be before the Senate during the present session of Congress. The Finance Committee has not had this matter before it for consideration at all, and the amendment deals altogether with the reciprocal-tax question.

I hope the Senator will not insist on the amendment in connection with this bill.

Mr. GURNEY. Mr. President, I am inclined to agree to the Senator's request, in the belief that a revenue measure will come to the Senate from the House at a later date.

I desire to state now that, in my opinion, the proposal embodied in the amendment is just as important to agriculturists all over the United States as are the measures for the relief of cotton that have been before the Senate during the past few days. Owing to the importance of the amendment to the people of my section, and likewise the people of all other sections, I do not want the Senate to think this is my particular idea. It has the backing of many other Senators and Representatives who have already introduced similar proposed legislation.

So, on the request of the Senator from Mississippi, I will let the amendment go over until some future date.

Mr. HARRISON. I assure the Senator that some form of a revenue bill will be before the Senate. We must extend the nuisance taxes, and we must do something with reference to corporate-structure taxation which terminates at the end of the year. Those matters will be before us, and the Senator then will have an opportunity to offer his amendment. I hope he will not complicate the situation by offering it to this bill, for it would provoke a long discussion.

Mr. GURNEY. I thank the Senator very much, and I accede to his request.

The PRESIDING OFFICER. The amendment being withdrawn, does the Senator from Massachusetts withdraw his suggestion of the absence of a quorum?

Mr. LODGE. I do.

Mr. VANDENBERG. Mr. President, under the circumstances, I suggest to the Senator from South Dakota that he have his amendment referred to the Finance Committee, so that under the friendly leadership of the Senator from Mississippi it may be considered by the committee.

Mr. GURNEY. That is a very appropriate request. I shall be glad to have the amendment referred to the Finance Committee, so that full information regarding it may be given to the Senate.

Mr. KING. Mr. President, I had expected the Senator from Michigan in charge of the bill to speak at some length concerning the bill and to properly address himself to its implications and unconstitutional features. I understand that he will pretermit any extended discussion but, of course, answer any questions submitted.

I had expected to discuss some features of the pending bill and to point out what I conceive to be some of its unwise, if not unsound, provisions. I had also intended to point out the dangerous movements, political and otherwise, toward the centralization of governmental authority in the National Government; but I know that the committee is anxious to secure action upon the measure at the earliest possible moment, and for that reason I shall not carry out my purpose, but at a later date will discuss the matters which I have in mind. May I state, however, that I have some doubts concerning the soundness of the majority view in the so-called O'Keefe case, which is relied upon in support of the bill under consideration.

Undoubtedly the O'Keefe case runs counter to principles which have been recognized for nearly a century, especially when such principles as in part determine the nature of our Government and the reciprocal obligations of each sovereignty toward the other. I suggest that Senators give heed to the dissenting opinion in the O'Keefe case, which states, in effect, that where the power to tax exists legislatures may exert it to destroy, to discourage, to protect, or exclusively for the purpose of raising revenue.

In my opinion, the bill under consideration strikes down decisions of the court which have been important guides in determining the policy of the Federal Government and landmarks which were necessary for the preservation of the States.

I might add that I am not so much concerned with the effect of this decision on the taxpayers as I am with its possible and indeed probable effect on the essential nature of our Government. We are told that a bill will follow this measure which will subject State securities to Federal taxation. I might add that there is an impairment of sovereignty if one government may so imperil the prerogatives of another as to interfere with the means of raising revenue.

I fear this bill, as I have indicated, will be regarded as a precedent for further assaults upon sovereign States, and for the further aggrandizement of the Federal Government. I am not so much interested in tax exemptions, but I do plead for maintenance of constitutional government and preservation of the States against the sweeping tides of this new federalism.

As stated, there is a powerful movement seeking to concentrate more and more authority in the Federal Government and to weaken the States and reduce them to mere administrative districts.

There is occasion for concern when the doctrine of implied immunity is destroyed, and this concern is deepened when there has been, as stated by Mr. Justice Frankfurter, "a reconstruction in the membership of the Court." I shall, when I discuss the questions involved, advert to some of the implications arising from the decision in the O'Keefe case and in the statement just quoted.

In conclusion, may I say that I understand that the committee of which the able Senator from Michigan is chairman, and which has investigated the sources of revenue, and particularly the question of the authority of the Federal Government to tax the salaries of State employees, as well as the

bonds and securities of States and their political subdivisions, and also the basis for reciprocity taxation between the States and the Federal Government, will within a few days submit to the Senate a report setting forth in detail the studies made and the conclusions reached, and also a bill which will provide for the taxation of State securities.

I shall await the report before discussing the questions above referred to, and which it was my intention to discuss in the Senate today.

Mr. AUSTIN. Mr. President, before the vote is taken on the bill, I desire to say that partly because of the special study in the Special Senate Committee on Immunity from Taxation which I gave to the bill and to the other subject which is not part of the bill—namely, immunity from taxation of the income from securities of both Federal and State governments—I believe that the bill will present for determination an issue which is yet undetermined with respect to the power of taxation of salaries; and, in a word, I think it is well expressed in the conclusion of the special committee which made a report to the Joint Committee on Internal Revenue Taxation. Mr. Stam was the author of that excellent report; and his conclusion was this with respect to what is yet undecided:

> However, under the Supreme Court decisions it does not appear that the Constitution will permit the Congress to tax the salaries of State judges, legislators, and other officers performing functions necessary to the existence of the State or political subdivisions, although such salaries are taxable under the existing law.

I understand that to be a special issue created by the enactment of the proposed legislation and the attempt to apply it, and in voting for it I am merely doing so on grounds of expediency, one of which is to prevent the great discrimination and injustice which would occur if this bill, or one similar, did not pass, in respect of the classification created by the decisions of the Court, of employees into different groups, leaving some of them taxed and some immune, and the whole matter in great confusion.

Moreover, I vote on the ground of expediency for this further reason, that if we do not provide against the collection of taxes for all the years within the statute of limitations, those who are now in a group that is discriminated against would be exposed to retroactive levy and collection of taxes covering a number of years, which would be an extremely heavy hardship upon them.

For these reasons I want the bill to pass, but I want it distinctly understood that I am not voting for the bill in order to give it a presumption of validity under the Constitution.

Mr. KING. Mr. President, I indicated a few moments ago that, in view of the fact that a report would be submitted within a few days which would recommend broadening the authority of the Federal Government to tax States and their political subdivisions, I would not delay the passage of the bill under consideration by discussing the general question of reciprocal taxation between the Federal Government and the States, and particularly the constitutional questions involved.

May I add that I agree with the views expressed by the Senator from Idaho [Mr. BORAH] a few moments ago concerning the McCulloch case, to which reference has been made. Undoubtedly the O'Keefe case is revolutionary. It overrules doctrines which have been accepted for nearly 100 years. Moreover, it is not free from obiter dicta, which may tend to confuse the issues involved and lead to erroneous conclusions as to the constitutional questions involved.

In my opinion, our dual form of government is being subjected to dangerous assaults which will inevitably modify its form, imperil the sovereignty of the States, and interfere with the liberties of citizens. I cannot help but believe that my party is swerving from the safe and sound constitutional path marked by the founders of the Republic. Many of our citizens are urging the extension of Federal authority into fields which are exclusively under the jurisdiction of the States and their political subdivisions. There is a powerful current which bears individuals and States away from safe moorings, from constitutional government into perilous waters. The sovereignty of the States is being destroyed and State socialism is looming in the distance. Many believe we are headed for increased socialistic activities and the constantly decreasing authority of the States.

When the Senator from Michigan presents his report I shall avail myself of the opportunity to discuss the questions which he will raise and the proposed legislation which his committee will support.

I shall consider the opinion of Mr. Justice Marshall in the McCulloch case as well as subsequent decisions of the Supreme Court dealing with the relations of the States to the Federal Government. For the present I content myself by stating that there are provisions in the bill with which I do not agree and which undoubtedly will be employed to justify legislation which will further undermine the integrity of sovereign States.

Mr. BROWN. Mr. President, I desire to state that the committee to which reference has been made by the Senator from Vermont and the Senator from Utah expects to have a report upon the question of taxation by the Federal Government of State and municipal bonds within the next 2 or 3 weeks. Of course, I expect that at that time I shall submit a report in writing in behalf of the committee, and undoubtedly there will be a report expressing views somewhat contrary to mine, probably submitted by the Senator from Vermont. At that time I hope we may have an opportunity to have a full discussion of the constitutional questions involved.

I may say that I myself have been ready with a speech on these constitutional questions for 3 weeks, and I hope I will have an opportunity to present it to the Senate. But the decision by the Supreme Court in the O'Keefe case a week ago yesterday eliminated any necessity for a constitutional discussion of the salary question. I think we will still have an opportunity to discuss the bond taxation proposition.

Mr. BORAH. Mr. President, when it comes to carrying out the implications of the O'Keefe case the Senator will find that there will be a great deal of discussion.

Mr. BROWN. I am glad to have the Senator from Idaho admit that there are implications in the O'Keefe case favorable to our views on the bond taxation proposition.

I may say that the Senator from Idaho has been the great advocate and the great leader in bringing to the American people the views which have prevailed in the Congress and in the Supreme Court upon the question of the nontaxability of State and municipal bonds by the Federal taxing power. I say to him that I well know that he has earnestly advocated the taxation by the Federal Government of its own obligations, but has consistently maintained that there is no power on the part of the Federal Government to tax State obligations.

I went into this matter a year or more ago believing much as the Senator did. Since that time I have been convinced the other way, and I look forward with interest to a discussion on the floor of the Senate of that most intricate and close legal question.

Mr. McKELLAR. Mr. President, will the Senator yield?

Mr. BROWN. I yield.

Mr. McKELLAR. Returning to the pending bill, will it not really give the Supreme Court the opportunity, if it sees fit to take it, to go back to the principles announced in the case of McCulloch against Maryland one-hundred-and-thirty-odd years ago?

Mr. BROWN. They can go into the immunity rule, which stemmed from McCulloch against Maryland. But I say to the Senator from Tennessee that the pending bill will not give the Supreme Court an opportunity to decide the question of the right of the Federal Government to tax State and municipal bonds. That must come by reason of some new legislation, which I hope will soon come out of the other House, where it must originate.

Mr. McKELLAR. I was not speaking of Federal bonds; I was merely speaking of the right to tax the salaries of employees of the States and of the Nation.

Mr. GLASS. Mr. President, how does the Senator from Tennessee expect the Supreme Court to get back to the principles of McCulloch against Maryland when one of the judges

recently announced that John Marshall, instead of being the great jurist he had been considered for many years, was merely an orator?

Mr. McKELLAR. We are not suggesting anything. We are merely giving them an opportunity to decide what is the law.

Mr. BORAH. Mr. President, I assume that under the decision of the Supreme Court rendered a week ago yesterday the pending bill is within the principles laid down. I have no reason to doubt its validity in the light of that decision. But I think it is unwise legislation. It will furnish about enough taxes to pay the gasoline bills for a portion of the automobiles which skirt the town on social occasions, for which the Government pays.

Mr. President, I believe that Federal judges and other Federal officials should pay taxes, but I believe the Federal Government should levy the taxes. I believe that State officials, judges and all others, should pay taxes, but I believe that the States should levy the taxes.

The amount of money which will be derived as a result of the enactment of this bill will be practically nil; yet we are placing the two sovereignties in a position where they will be constantly affected by the action of one another with references to taxes upon their officials. We are placing the two sovereignties in the position where they will not be recognized in their sovereign integrity, but as mere taxable entities of the Federal Government; and that is not what they are, and never were intended to be.

When John Marshall decided the case of McCullough against Maryland he did not find anything in the Constitution of the United States which stated that the States could not tax the instrumentalities of the Federal Government, but he said it was inherent in the very nature of a federal government that it must be so; that if the two sovereignties were to exist they must exist free from each other's interference, free from embarrassment; and therefore, in the very nature of things, while it was not written in the Constitution, it must necessarily be true. If Marshall had disregarded the governmental question and treated the matter solely as a tax question, the tax would have been valid. We ought never to lose sight of that fact.

That is just as true now; and, in my opinion, we ought, as a matter of policy, to adhere to it even though the Supreme Court has in this particular instance undoubtedly given validity to legislation like the pending bill.

I shall vote against the bill if there is a yea-and-nay vote, and if it is not a yea-and-nay vote I shall vote against it in my mind.

The PRESIDING OFFICER. The question is on the engrossment of the amendments and the third reading of the bill.

The amendments were ordered to be engrossed and the bill to be read a third time.

The bill was read the third time and passed.

EXECUTIVE SESSION

Mr. BARKLEY. I move that the Senate proceed to consider executive business.

The motion was agreed to; and the Senate proceeded to the consideration of executive business.

EXECUTIVE REPORTS OF A COMMITTEE

Mr. McKELLAR, from the Committee on Post Offices and Post Roads, reported favorably the nominations of several postmasters, which were ordered to be placed on the Executive Calendar.

The PRESIDING OFFICER (Mr. GEORGE in the chair). Are there further reports of committees? If not, the clerk will state the nominations on the calendar.

CUSTOMS SERVICE—FLORENCE CLARKE LYNCH

The legislative clerk read the nomination of Florence Clarke Lynch, of New York, to be appraiser of merchandise.

Mr. KING. Mr. President, I should like to have this nomination go over until tomorrow.

The PRESIDING OFFICER. Without objection, the nomination will be passed over.

THE JUDICIARY

The legislative clerk read the nomination of Wiley Blount Rutledge, Jr., of Iowa, to be an associate justice of the United States Court of Appeals for the District of Columbia.

The PRESIDING OFFICER. Without objection, the nomination is confirmed.

Mr. KING. Mr. President, I wish to state, with reference to the nomination just confirmed, that if there had been a yea-and-nay vote I would have voted in the negative.

POSTMASTERS

The legislative clerk proceeded to read sundry nominations of postmasters.

Mr. BARKLEY. I ask unanimous consent that the nominations of postmasters be confirmed en bloc.

The PRESIDING OFFICER. Without objection, the postoffice nominations are confirmed en bloc.

ASSOCIATE JUSTICE, SUPREME COURT OF THE UNITED STATES

The PRESIDING OFFICER. The clerk will state the nomination passed over.

The legislative clerk read the nomination of William O. Douglas, of Connecticut, to be Associate Justice, Supreme Court of the United States.

Mr. FRAZIER. Mr. President, when the Senate adjourned yesterday I was speaking on the question of the confirmation of the nomination of Mr. Douglas to be Associate Justice of the Supreme Court of the United States. I wish to continue the discussion now.

The New York Herald Tribune on March 16, 1939, on page 1, said that Mr. Douglas had "labeled as 'phony' and bitterly attacked" the amendments to the statute proposed by the stock exchanges.

Not only did Mr. Douglas issue a prepared statement bitterly attacking the proposed amendments to the statute, but as the New York Times reported on March 16, 1939, Mr. Douglas "added sharp oral criticism." This was so completely contrary to Mr. Douglas' long-continued policy that Wall Street "saw red." It was reported in many financial and metropolitan newspapers. For example, on March 19, 1939, Burton Crane, a reporter of the New York Times who had come to Washington during the deliberations of the stock exchanges of the country on March 13 and 14 to report on what they were doing, wrote an article in the New York Times which was published on March 19, 1939. In the article he had the following to say:

WALL STREET WAXES WROTH

For some months exchange members have been chafing at the thoroughgoing nature of the Martin cooperation with the S. E. C.

Mr. Martin, of course, was the new president of the Wall Street Stock Exchange.

When the Tuesday report went in, many in the street thought it practically S. E. C. propaganda. It seemed to accord perfectly—save in its allusion to the rule on "insiders"—with the S. E. C.'s philosophy of the past. Thus the Douglas attack, more bitter on the Wall Street New Deal than ever on the Old Guard, raised flaring anger. The financial district has "seen red" often in the past, but probably never has it been in such a fighting rage since the collapse of the gold corner, when mobs of would-be lynchers roamed the streets looking for Jay Gould and Jim Fisk.

Mr. President, the writer in the New York Times says that the criticism of the New York Stock Exchange made by Mr. Douglas on the 15th of March was the cause of more bitter feeling than anything which had taken place in Wall Street for many years; that it made the Wall Streeters "see red."

Mr. Crane's report intimates that Wall Street apparently assumed that Mr. Douglas' outburst of March 15 was occasioned by one of his major difficulties in getting the Supreme Court nomination. He had been attacked as being too close to Wall Street. Mr. Crane wrote in the New York Times on March 19, 1939:

If the tone of comment means anything, the manner of the Douglas reply has wrecked the painfully built structure of cooperation between S. E. C. and stock exchange. Perhaps that looks like a gain to the Commission's Chairman, for it was that cooperation which had produced hints that he had lost his liberalism. That ghost, at least, is laid.

Yesterday I quoted from an article published in the magazine the Nation, which stated that Mr. Douglas was too close to Wall Street and had been collaborating with Wall Street, and the writer of the article objected to Mr. Douglas' appointment to the Supreme Court on that ground.

Is it fair to say that Mr. Douglas' attack, the time it was made, and its tone were occasioned or influenced by the fact that his intimacy with Wall Street was likely to lose him the place on the Supreme Court? The answer is furnished by his close friend, Mr. Arthur Krock, of the New York Times. It is well known that Mr. Krock has been one of the leading supporters of Mr. Douglas for elevation to the Supreme Court. It is obvious that the explanation offered by Mr. Krock is one which would fairly reflect what was motivating Mr. Douglas and would be sympathetic to him. Mr. Krock's explanation was published while Wall Street was still wondering about the tremendous change in Mr. Douglas' attitude toward the New York Stock Exchange, which occurred on March 15, 1939.

Mr. Krock's article appears in section IV of the Sunday issue of the New York Times, March 26, 1939, at page 3 of that section, and is headed "Revision of S. E. C. Laws Asked at Fatal Hour."

In other words, the reporter for the New York Times thinks that the Wall Street Stock Exchange asked for its amendments to the law at an inopportune time, the request coming just when Mr. Douglas was a candidate for appointment to the Supreme Court and had been accused of being too close to Wall Street.

The article is headed "Revision of S. E. C. Laws Asked at Fatal Hour."

The article then mentions the interest of the administration in the Stock Exchange Act and other factors which would not have a bearing on the question of the timeliness of the presentation of the proposals by the stock exchange for amendment of the act. The article must have been very interesting to the brokers and bankers in Wall Street. It presented to them a picture of a race between two candidates for the Supreme Court vacancy, one being Mr. Douglas, a man satisfactory to Wall Street, and the other a man who is pictured as a radical, and unsatisfactory to Wall Street. As a matter of fact, the newspapers themselves, during the period before the sending in of the nomination, indicated that there were other candidates under consideration, and it was not simply a race between the two persons mentioned in this article. Some of the language from the article may be quoted.

> A more unfortunate time could not have been chosen by the exchanges to seek what they sought. * * * Mr. Douglas, to the great satisfaction of the business and financial communities, had been cooperative and pragmatic in dealing with his charges [meaning the stock exchanges] and had publicly referred to himself as a conservative. * * *

The article goes on to say that supporters of another candidate—

> At this time * * * were casting doubt on Mr. Douglas' loyalty to fundamental New Dealism, disputing his claim to being a "liberal" and asserting he had been a pawn of Wall Street. * * * This was the hour chosen to submit the proposals to Mr. Douglas.

That is, the amendments to the law governing the stock exchanges.

> It was hardly a period for impersonal, nonpolitical consideration.

That sentence by the reporter is rather significant, it seems to me. He says that this time, when the President was considering an appointment to the Supreme Court, on the 15th of March, was hardly a period for impersonal nonpolitical consideration. Senators can judge for themselves just what is meant by that. I shall try to explain what I think it means.

> This correspondent happens to believe that Mr. Douglas was wholly sincere in disapproving the proposals, though the use of the word "phony" and of certain other expressions suggested a wish to prove his loyalty to the acts he is administering and a firm resolve to do nothing that might be represented as canceling any part of the President's pet reform.
>
> If Mr. Douglas had approved all or any of the proposals, this writer believes he would have said as much, though he would have left them on the table for a while. What would have been the result? The [his opponent's] lobby would have made excellent use of the situation, particularly at the White House. * * * For all these reasons, and without disparagement of the wisdom of some amendments or the good faith of Chairman Douglas, the timing and psychology of the incident were obviously ill-conceived.

Why was this "hardly a period for impersonal, nonpolitical consideration"? Why is any time not a period for "impersonal, nonpolitical consideration" in the functioning of a regulatory official on public matters? If Mr. Krock is correct in his statement, then the conclusion follows that, in the face of the tug of war going on for the designation to the Supreme Court post, the consideration to be given to anything submitted to Mr. Douglas in his official capacity would be determined by personal and political motives. Any other conclusion is impossible if Mr. Krock's fundamental analysis is sound. If Mr. Douglas had not been under consideration for this important post, would Mr. Douglas' consideration of this matter have been impersonal and nonpolitical; and, if "impersonal" and "nonpolitical," would his decision have been different? Certainly the difference between impersonal and nonpolitical consideration on the one hand and personal, political consideration on the other hand cannot be determined merely by the fact that in the one case Mr. Douglas' response came within 24 hours, whereas in the other it would have come after "a while," meaning in the one case within 24 hours after the stock exchange had sent in its proposed amendment, whereas in the other case it would come after "a while."

The reporter said that if it had not been for the political situation, Mr. Douglas probably would not have answered or made any comment on the proposed amendments until after "a while."

Does not Mr. Krock, Mr. Douglas' good friend, seem to suggest something more deep-seated than a slight difference in time when he sets up the sharp antithesis between "impersonal, nonpolitical consideration" on the one hand, and personal and political consideration on the other hand?

Is not the effect of Mr. Krock's analysis substantially as follows:

(1) The stock exchange should have waited until Mr. Douglas' nomination was actually submitted before sending in the proposed amendments.

(2) If that had been done, Mr. Douglas' answer might have been different, as is indicated by the interview given to Mr. Krock on March 29. If that be so, what an indictment. Later I shall refer to that interview.

Does it not follow also from Mr. Krock's article that a regulating commissioner, normally impersonal and nonpolitical, might be expected to assume on commission matters a personal and political attitude when he is being considered for such a high office as that of Justice of the Supreme Court? But if a person, under such circumstances, adopts an attitude animated solely by personal and political motives, irrespective of the merits of the problem, which for this purpose need not be dwelt on at the moment, does not that constitute the gravest warning as to the fundamental and basic lack of that temperament, that approach, without which one has no right to aspire to such high judicial office? Since when has opportunism been the qualification for the highest judicial office?

That personal and political considerations, rather than the merits of the problem, moved Mr. Douglas, as is suggested by Mr. Krock in his March 26 article, is confirmed by Mr. Douglas himself in his interview on March 28, to which I shall shortly come.

Other friends of Mr. Douglas have made clear how shrewd was his understanding of the fact that if he made a vigorous attack on the New York Stock Exchange on March 15, this would help to obtain for him the nomination to the United States Supreme Court. His name had been pushed by his friends for 30 days, and as yet unsuccessfully, when the great opportunity came to Mr. Douglas on March 15 to attack the stock exchanges. Something had to be done to get the prize. He made the attack on the 15th. Did this help to procure for him the appointment? The answer is given by his good friends in their article in the Merry-Go-Round column published throughout the country.

Before I read that article I wish to refer to another article. I am sorry not more Members are interested in this matter.

The PRESIDING OFFICER (Mr. HATCH in the chair). Does the Senator wish to suggest the absence of a quorum?

Mr. FRAZIER. When a man 40 years of age is being considered for an appointment to the Supreme Court for life, an appointment good for at least another 30 years, it seems to me important that the facts of the case should be brought out.

Mr. MALONEY. Mr. President, will the Senator yield to me in order that I may suggest the absence of a quorum?

Mr. FRAZIER. I yield.

Mr. MALONEY. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The Chief Clerk called the roll, and the following Senators answered to their names:

Adams	Donahey	LaFollette	Radcliffe
Andrews	Downey	Lee	Reed
Ashurst	Ellender	Lodge	Reynolds
Austin	Frazier	Logan	Russell
Bankhead	George	Lucas	Schwartz
Barbour	Gerry	Lundeen	Schwellenbach
Barkley	Gillette	McCarran	Sheppard
Bilbo	Glass	McKellar	Shipstead
Bone	Green	McNary	Smathers
Borah	Guffey	Maloney	Smith
Brown	Gurney	Mead	Stewart
Bulow	Harrison	Miller	Taft
Burke	Hatch	Minton	Thomas, Okla.
Byrd	Hayden	Murray	Thomas, Utah
Byrnes	Herring	Neely	Townsend
Caraway	Hill	Norris	Tydings
Chavez	Holman	Nye	Vandenberg
Clark, Mo.	Hughes	O'Mahoney	Wagner
Connally	Johnson, Calif.	Overton	Wheeler
Danaher	Johnson, Colo.	Pepper	White
Davis	King	Pittman	Wiley

The PRESIDING OFFICER. Eighty-four Senators having answered to their names, a quorum is present.

Mr. FRAZIER. Mr. President, when the quorum call was made, I was talking about the statement Mr. Douglas had sent to the New York Stock Exchange on March 15, criticizing the exchange very severely for the amendments they had offered to the exchange laws. One of the newspaper writers, in commenting on the statement, said that it was the worst tirade against the Wall Street Stock Exchange that had been made for many years. Another writer said it was an improper time for the stock exchange to have made the request for a change in their laws. He said it was an inopportune time because the Chairman of the S. E. C. could not make a nonpolitical, impersonal statement at that time, intimating he could not do so because he was a candidate for appointment to the Supreme Court.

Mr. President, I have a copy of News Week of March 27. There is an article in it on the Douglas nomination. I desire to read just a paragraph of it. The writer of this article in News Week states that the tirade of Mr. Douglas on the New York Stock Exchange on March 15 was O. K.'d by the White House before it was sent to New York.

> The fact that Douglas' statement had the prior approval of the White House lends credence to widely held views that its chief purpose was political—to serve notice that the short-sales concession did not mean the New Deal was retreating, and possibly to build up Douglas for the Supreme Court.

That is what this article states.

Mr. President, is it possible that conditions have gotten to such a state that in order for a man to be appointed to a position on the Supreme Court, the highest law-making body of the land, he must play politics? This article seems to indicate it. The little paragraph that I read says that the chief purpose of the statement was, perhaps—

> To serve notice that the short-sales concession did not mean that the New Deal was retreating—

Referring to the short-sales concession that the S. E. C. had made about 2 weeks before the 15th of March, early in the month of March. It was a ruling that the stock exchange had asked for to make short selling easier.

Mr. President, that concession was to make short selling easier, and Mr. Douglas had agreed to it at that time. In my opinion, short selling is a crime at any time. It is contrary to the best interests of the people who own the properties that are being sold. It forces down the prices, and that is the object of short selling; and this concession that the S. E. C. had made under Mr. Douglas a couple of weeks before this time was to make short selling easier. The article goes on to say that it was probably politics, and I am frank to think there was more politics played in it than we at the present time know anything about.

On March 20, 1939, Mr. Douglas' name was sent to the Senate. That was just 5 days after his tirade on the New York Stock Exchange. I have already stated that some of the liberal magazines like the Nation had criticized the appointment of Mr. Douglas, or his consideration for appointment, on the ground that he was too close to Wall Street interests—that he was playing with them. One article referred to him as "the tool of Wall Street." So on March 20, 1939, Mr. Douglas' name was sent to the Senate for the Supreme Court post, 5 days after the day on which Mr. Douglas made such good use of his opportunity to "roast" the New York Stock Exchange.

In ascertaining whether Mr. Douglas' use of that opportunity was a genuine expression of his own viewpoint, it is not necessary to rely simply on the testimony of his newspaper friends. Mr. Douglas' activities subsequent to the sending in of his name on March 20, 1939, tell the same story.

Even before the nomination actually went in assurances had been going to Wall Street that its bitterness against Mr. Douglas for his novel attitude toward Wall Street ought to be tempered by the possibility or probability that he really was much friendlier to Wall Street than his action of March 15, 1939, might indicate. Though his candidacy for the Supreme Court was sympathetically viewed in Wall Street prior to the March 15 incident, that sympathy seemed to have disappeared at the time when his name was sent to the Senate on March 20, 1939. The following is a quotation from an article in the New York Times on March 21, 1939, in its financial section:

> HAIL AND FAREWELL
>
> In view of the coolness which recently has arisen between Mr. Douglas and Wall Street, there were no public expressions of spontaneous good will noticeable in the financial district yesterday upon news of his nomination for the Supreme Court. Today may be another story, for some gentlemen who were busy with other matters yesterday may comment in a friendly way on Mr. Douglas' appointment. Two weeks ago there would have been an instant and favorable response to the news. The difference is not that Mr. Douglas had ever been less hard a taskmaster but that what was felt to have been an undeserved rebuff was addressed by him last week to as well-intentioned a group of men as ever had left New York for Washington since this administration took office.

A group of men had come down here representing the New York Stock Exchange and other stock exchanges throughout the Nation to ask the S. E. C. for some amendments to the regulations, and this writer says Mr. Douglas had rebuffed them. Another writer went on to say that the New York Stock Exchange "saw red," and that after receiving that report of March 15 they were in the most angry mood that they had been in for years.

Thereafter, however, word was carried to Wall Street showing that it should feel quite differently about Mr. Douglas.

For example, Burton Crane, of the New York Times, who had previously reported the bitterness in Wall Street, wrote an article which appeared in the financial section of the New York Times on Sunday, March 26, 1939, after the nomination had been favorably reported by the subcommittee. The article begins as follows:

> Even before William O. Douglas, Chairman of the Securities and Exchange Commission, had been nominated by President Roosevelt for a place on the Bench of the Supreme Court of the United States, his colleagues on the Commission passed the opinion to the financial community here that his denunciation of proposals made by a group of representatives of the securities exchanges of the country need not be taken too seriously.

That was on March 26, right after the nomination had come to the Senate.

Finally, on March 29, 1939, Mr. Douglas presented to Wall Street a greater appeasement than he had ever offered that financial group before. He was about to leave the S. E. C.

for the Supreme Court. On March 28, 1939, when it looked as if it would be the last day on which he could with propriety, discuss S. E. C. and Wall Street affairs, he gave an interview to his friend, Mr. Krock, of the New York Times, and this interview was published the next day. This is one of the most remarkable interviews in the history of the S. E. C., if not indeed, in the history of liberal government. Insofar as the prestige of his name and experience as head of the S. E. C. and as a man elevated to the highest tribunal in the land could do something for Wall Street, Mr. Douglas did it. The interview was rather quietly written, and its full meaning does not appear in the article itself, except to those who know other facts which were known to the important men in Wall Street when they read that article.

The first thing Mr. Douglas did in this interview for the benefit of the most powerful financial institutions in our financial capital was to take sides with the big Wall Street banks and trust companies against the S. E. C., even against himself of an earlier date, against the measures desired by the administration itself. The administration's purposes have been to increase the jurisdiction, the power, and the functions of the S. E. C., and to increase the fields over which it shall have power as a regulating authority. For example, an effort has been made since 1937 to put under the jurisdiction of the S. E. C. the activities of the big financial institutions, primarily those in New York, in the so-called trust-indenture business. The bills for this purpose were introduced in the Senate by the senior Senator from Kentucky [Mr. BARKLEY], both in the first session of the Seventy-fifth Congress and in the first session of the present Congress. In the previous Congress the bill was known as Senate bill 2344, and in the present Congress the bill introduced for the purpose is Senate bill 477.

The bills were rather lengthy. The present bill contains 62 pages, as I remember. By the way, it was considered for some time by the subcommittee, of which I happened to be a member. Members of the big banking institutions of Wall Street, Chicago, and over the country appeared, and most of them protested in the first place. The bill was changed to some extent, and they agreed, or partially agreed, or at least some of them agreed, that it would be all right and workable, and this morning Senate bill 477 was reported from the Committee on Banking and Currency for the calendar, for discussion and consideration by the Senate.

The purpose of the bill seems to be a worthy one, to curb very serious abuses in this branch of high finance.

Committees of both the Senate and House of Representatives have held hearings on these bills. The Senate Banking and Currency Committee conducted hearings on Senate bill 2344 in June 1937 and on the pending bill in February of this year.

In the 1937 hearings Mr. Douglas, as Chairman of the S. E. C., made a lengthy statement which took up the better part of two sessions; in fact, it took all of two sessions to hear Mr. Douglas last June on the bill pending at that time. The sessions began in the morning and ran until 1 o'clock, then began again at half past two and ran until 5, and Mr. Douglas was on the stand all the time in favor of the bill then pending.

He stated that $40,000,000,000 of securities national distributed are outstanding under trust indentures of the type that are to be subjected to regulation under the Barkley bill. He urged the importance of protecting the purchasers of such bonds by putting this subject under the jurisdiction of the S. E. C. In great detail he set forth the various powers and functions which would be added to the activities of the S. E. C. by the Barkley bill. That bill would have conferred upon the S. E. C. a new large supervisory power over big financial institutions. Anyone who reads Mr. Douglas' statement in the hearings before the Senate Banking and Currency Committee on June 9, 1937, cannot fail to notice how broad and extensive is the additional power that bill would confer on the S. E. C., and the additional functions and supervisory authority the Barkley bill would confer on that body.

When the bill was reintroduced in the Senate early this year, also by the Senator from Kentucky, hearings were conducted before the Senate Banking and Currency Committee. Again it was made clear that the bill would confer large additional jurisdiction on the S. E. C.

Under date of May 24, 1937, the President urged the Barkley bill upon the Senator from New York [Mr. WAGNER], the chairman of the Banking and Currency Committee. That letter is to be found at page 15 of the hearings of the committee. In addition the S. E. C. and Mr. Douglas himself urged the bill.

Another member of the Commission, Mr. Eicher, came before the committee and stated in the beginning of his statement that he was pinch hitting for Mr. Douglas. He made a very strong statement in favor of the Barkley bill. But these bills have had the most determined opposition from the big banks and trust companies in Wall Street, and from the Investment Bankers Association, as well as other Wall Street groups.

In the interview which Mr. Douglas gave to Mr. Krock on March 28, 1939, the interview which they then evidently thought was his final interview as Chairman of the S. E. C., his last opportunity to express his views on S. E. C. and Wall Street matters from the vantage point of Commission Chairman, Mr. Douglas said that no further functions or jurisdiction should be conferred on the S. E. C. for at least a long time to come. The following is quoted from the interview as written by Mr. Krock and published in the New York Times of March 29, 1939, at page 22 of that issue:

WASHINGTON, March 28.—By the end of this week William O. Douglas will have been overwhelmingly, perhaps unanimously, confirmed by the Senate to be an Associate Justice of the Supreme Court of the United States. He will then depart forever from the Chairman's office at the Securities and Exchange Commission. But having been so suddenly lifted from the bull ring to the stratosphere of public service the smell of blood and sand is still strong in his nostrils. Today he discussed the Commission and its problems as though they were to remain as much a part of his life as they were a couple of weeks ago.

Listen to this:

In Mr. Douglas' opinion the activities of the S. E. C. have reached their practical peak.

I want the Senator from Kentucky to listen to this. I am reading an interview with the Chairman of the S. E. C., Mr. Douglas, as quoted in the New York Times on March 29 by Arthur Krock.

In Mr. Douglas' opinion the activities of the S. E. C. have reached their practical peak. He thinks its scope is now as wide and deep as it effectively can be.

What does this mean? Is he advocating the enactment of the bill of the Senator from Kentucky? Oh, no; he is not. He says they have gone as far as they want to go. The Senator's bill goes into the waste basket.

Mr. BARKLEY. Mr. President——

The PRESIDING OFFICER. Does the Senator from North Dakota yield to the Senator from Kentucky?

Mr. FRAZIER. I yield.

Mr. BARKLEY. I do not understand that that article is a direct quotation from anything Mr. Douglas said on the subject. It may be an inference drawn by the correspondent.

Mr. FRAZIER. Mr. Krock has been one of his chief "boosters" in the New York Times.

Mr. BARKLEY. Yes; he is a good friend; but even if Mr. Krock is correct in the assumption that Mr. Douglas believed that the peak of the work of the S. E. C. in the matter of laying down fundamental regulations for the conduct of the stock exchange had been accomplished, and that from now on it would be largely a matter of detail and routine work, passing upon applications as they might arise, it seems to me there is nothing in the inference or in the conclusion that is inconsistent with the possible facts. One of the first duties of the S. E. C. was to start the process of regulation, to carry out the law in laying down the fundamental rules upon which the stock exchange should be conducted. After they had done that it resolved itself largely into routine, detailed matters as individual cases or situations arise.

Frankly, I do not see that Mr. Krock's comment upon the present attitude of Mr. Douglas is an indication that Mr. Douglas has in any way lessened his solicitude or has retraced his steps or has recanted his attitude with respect to the

regulation of the stock exchange and the enforcement of the Securities Act which Congress passed. But even if it might be so interpreted, certainly Mr. Krock, as I understand, makes no effort to quote anything Mr. Douglas said to indicate any change in his views on the subject.

Mr. FRAZIER. As I have stated, Mr. Krock has been a correspondent for the New York Times for a long time and has been a very close friend and supporter of Mr. Douglas. This is his statement, written on March 28, in an interview of March 27, apparently. I will not take the time to read it all.

Mr. BARKLEY. Did the article say anything about the reason why Mr. Douglas was willing to step out of the S. E. C. now that he thought its fundamental work had been started and the foundation had been laid?

Mr. FRAZIER. No; he was stepping out of the S. E. C. because he was getting a better job.

Mr. BARKLEY. I understand that, and I do not know of anyone who would not do the same thing; but in what connection was Mr. Krock using the implication—I have not read the article——

Mr. FRAZIER. I do not think the Senator was listening when I read the first part of it. Let me read it again:

[From the Nation]

AS CHAIRMAN DOUGLAS SEES THE FUTURE OF THE S. E. C.

WASHINGTON, March 28.—By the end of this week William O. Douglas will have been overwhelmingly, perhaps unanimously, confirmed by the Senate to be an Associate Justice of the Supreme Court of the United States. He will then depart forever from the Chairman's office at the Securities and Exchange Commission. But having been so suddenly lifted from the bull ring to the stratosphere of public service the smell of blood and sand is still strong in his nostrils. Today he discussed the Commission and its problems as though they were to remain as much a part of his life as they were a couple of weeks ago.

Then he says of Mr. Douglas' opinion:

In Mr. Douglas' opinion, the activities of the S. E. C. have reached their practical peak. He thinks its scope is now as wide and deep as it effectively can be.

This whole article seems to be an appeasement to the New York Stock Exchange. Of course, as the Senator knows, they were opposed to the Senator's bill.

Mr. BARKLEY. Mr. President, I do not know the importance of trying to appease the New York Stock Exchange in reference to the appointment of Mr. Douglas to the Supreme Court. But I imagine the same thing might have been said in the early stages about the Interstate Commerce Commission, or the Federal Trade Commission, that after it had cleared new ground, had plowed new territory, had built highways in new regulatory forests, if I may use a combination of metaphors, then, the work of the Commission having been outlined in the foundation, in the prime hearing in which it was compelled to engage, it was naturally assumed that its peak of operations had been reached, that it was no longer necessary to build new highways in new forests of regulations, no longer necessary to lay a foundation, because Congress had done that when the law was passed and the Commission was created.

The fact that Mr. Douglas has assumed to carry to the Supreme Court his interest in the S. E. C. and its problems seems to me to indicate that he has not altogether forgotten the service that is being rendered by this Commission, or the opportunities for it to render a continued service and reach a peak of operation which may not have been attained heretofore.

Mr. FRAZIER. Of course, the Senator is entitled to his own opinion in the matter, but it seems to me that some politics has been played, this having come just a couple of weeks after the tirade against the stock exchange, on March 15, 5 days before he received his appointment to the Supreme Court.

I do not know whether the Senator was in the Chamber when I read the article which stated that the tirade on the New York Stock Exchange had prior approval of the White House before it was sent to New York. So it looks to me as though there was some politics.

Mr. BARKLEY. The mere fact that I may or may not have been listening to the article when it was read may shed no light on whether the article had prior White House approval. Many articles are said to have White House approval which the White House has never seen.

Mr. FRAZIER. In speaking to newspaper reporters a few days ago I referred to that article. One of them said, "That is correct. We were told at the White House that there would be very important news the next day about the S. E. C." On the next day came the tirade against Wall Street.

The article in the New York Times continues:

After the utilities' integration has been completed, some years hence, the Chairman thinks there will be room to substitute another task of equal size. But the aggregate scope of the S. E. C. should not, he believes, be expanded.

That article was written as the result of Mr. Krock's interview with Mr. Douglas.

Thus Mr. Douglas, as his parting shot, proposed to throw into the wastebasket the bills, such as the one introduced by the Senator from Kentucky [Mr. BARKLEY], which had been urged by the President and by the S. E. C., and earlier by Mr. Douglas himself, for the correction of gross abuses in Wall Street, a correction which would be effected by adding substantially to the functions and activities of the S. E. C.

Mr. President, I wish to say that this morning in the committee I voted to report one of the bills favorably, because I thought from what I knew of it—I admit I did not understand all of it—that it was an improvement over the present plan.

The President, the S. E. C., leading committees of the Senate and House have devoted a great amount of time to those bills. The need for them was demonstrated by inquiries instituted by the S. E. C. in the period before Mr. Douglas was a member of that body. He inherited the problem when he became Chairman of the S. E. C. But in the interview published on March 29, 1939, he was ready, without consulting with Congress, without consulting with the members of the committees whose time he had taken in urging the passage of such bills, to make, at the expense of the public interest, a sacrifice of the time and labor devoted to this legislation by the Senate and the House, by the President, and by the S. E. C. Who authorized Mr. Douglas to make, at the expense of Congress and of the S. E. C. and of the public, such a gesture of good will to Wall Street? It was more than a gesture of good will. It was a good-will offering—a boon and a bonus to big financial institutions in Wall Street, which had been fighting the Barkley bill for 2 years.

The parting interview which Mr. Douglas gave on March 28, 1939, was more than enough to offset his anti-Wall Street statement of 2 weeks earlier. In this interview Mr. Douglas did not rest content with offering an olive branch to the big Wall Street banks, to the Investment Bankers Association, and to similar organizations of high finance. He went further in making up for his March 15, 1939, rejection of the stock-exchange proposals to amend the stock-exchange statute. In this interview he proposed that there should be amendments to the Stock Exchange Act. That might have seemed like making full correction of his "indiscretion" of March 15, 1939. But he did a great deal more. It seemed that he was ready to fill the Wall Street cup to overflowing. He proposed also that there should be amendments to the Securities Act of 1933—something for which the stock exchanges had not asked on the fatal day when Mr. Douglas took occasion to denounce proposals for statutory amendments.

What were Mr. Douglas' reasons for proposing amendments to these two statutes? The following appears in the interview as reported by Mr. Krock, published in the New York Times of March 29, 1939:

The Chairman went on to say he thought that at some later time an eminent drafting committee, representing all legitimate interests, should undertake to consolidate and perfect the Securities Act and the Securities and Exchange Act, which are the legal charters of the S. E. C. They were, he pointed out, written separately and somewhat to meet two different situations. Necessarily therefore duplications, ambiguities, and probably some extra and unintended exactions on honest business are to be found.

This statement deserves analysis. Mr. Douglas tried to justify the taking away of safeguards now in these important statutes on the ground that they had been written separately and involved duplications. It is surprising that after several years on the S. E. C. Mr. Douglas never learned that the same people drew both statutes, that the second of the statutes was drawn with a complete understanding of the first. That particular explanation advanced by Mr. Douglas was very weak, in my opinion.

Other reasons he advances are that the statutes suffer from ambiguities and that they are interfering with honest business. This has been the perennial cry of Wall Street interests against these statutes ever since the passage of the Securities Act of 1933. In fact it was the same line of argument which Mr. Douglas himself, at the end of 1933, in a learned article put forward, recommending that the Securities Act be amended.

In the Yale Law Journal of December 1933 appears an article, The Federal Securities Act of 1933, by William O. Douglas. I quote from the article:

> As Berle has said, the Securities Act, though probably one of the most spectacular types of legislation, is of secondary importance in a comprehensive program of social control over finance. Some, however, have believed, apparently in all sincerity, that the great drop in security values in the last 5 years was the result of failure to tell the "truth" about securities.

Perhaps it was the failure to tell the truth about securities which caused the drop in the price of stock and bonds during the crisis of 1929. I do not know about that. In my opinion there was not enough truth told about securities. That was the reason for the boom just before 1929.

I continue to read from the Yale Law Journal:

> And others have thought that with the Securities Act it would be possible to prevent a recurrence of the scandals which have brought many financiers into disrepute in recent years. As a matter of fact, there are but few of the transactions investigated by the Senate Committee on Banking and Currency which the Securities Act would have controlled. There is nothing in the act which would control the speculative craze of the American public or which would eliminate wholly unsound capital structures. There is nothing in the act which would prevent a tyrannical management from playing wide and loose with scattered minorities or which would prevent a new pyramiding of holding companies violative of the public interest and all canons of sound finance. All the act pretends to do is to require the "truth about securities" at the time of issue and to impose a penalty for failure to tell the truth. Once it is told the matter is left to the investor.

That article in 1933 was referred to by some of the newspapers as Mr. Douglas' learned article about the Securities Act. He secured some changes. It is also said in an article in the Nation, which I think I quoted yesterday, that the recommendations which Mr. Douglas made in 1933 were in direct line with the statements made by the Wall Street interests in 1933. The Nation drew the conclusion that it did not know whether he was a real progressive or whether he should be called a "Wall Streeter."

Mr. President, what Mr. Douglas proposed, in fact, was that the act be emasculated, and emasculated it was the following year as a result of the pressure from Wall Street publicists, who found great comfort in Mr. Douglas' joining in that very movement. Now he revives the same old cry to emasculate further the Securities Act which he was already successful in putting under the knife in 1934. And he wants also to apply the knife to the Stock Exchange Act, as he has already done to the act which preceded it.

Wall Street could hardly have asked more from any past, present, or future member or chairman of the S. E. C. This is appeasement with a vengeance.

I have quoted from the interview in the New York Times of March 29, after the writer thought Mr. Douglas' nomination would be approved by the United States Senate on the 28th.

This is giving Wall Street far more than it could have dreamed of asking. To be sure, Mr. Douglas, who had only 2 weeks earlier rejected proposed amendments, recommended in his interview that any amendments to these two statutes be postponed for the time being. Wall Street will be ready to wait for a time, now that it has received the blessing and benediction of Mr. Douglas and his weighty recommendations, all with a view to cutting up statutes from which Wall Street has been striving to escape ever since those statutes were enacted.

I desire to call particular attention to Mr. Douglas' statement in December 1938, that the axis he had established between the S. E. C. and the New York Stock Exchange "has withstood its first shock perfectly." The shock to which he was referring was the refusal of the so-called reform administration of the New York Stock Exchange to take any action in the Whitney case, and the consequent resignation of the public member of the exchange's governing board, President Robert M. Hutchins, of the University of Chicago. I read his letter of resignation yesterday. How did the axis withstand this shock? By Mr. Douglas' complete and abject capitulation to the New York Stock Exchange. Instead of himself doing anything about it, he, in effect, said: "You, the stock exchange, have shut the door. Very well; we will shut the door also, and join you in closing our eyes to this offensive situation" to which President Hutchins, at any rate, was unable to close his eyes. When Mr. Douglas said that "the axis has withstood its first shock perfectly," did he mean that something had happened which threatened to pull the two members of the axis apart, by reason of the fact that the loyalties and objectives of the two members of the axis were in conflict? Or did he mean that both members of the axis joined in permitting something to be done or participated in something which was against the public interest? The latter interpretation is not likely. If the former, then whose loyalties prevailed—the loyalties served by the stock exchange, or those served by the S. E. C.? If the S. E. C. yielded to the stock exchange, then, according to Hutchins, it was yielding on an issue that was contrary to public interest and the good name of the exchange. If, on the other hand, the stock exchange yielded to the S. E. C., then we must assume that it was the S. E. C. that did not wish to do anything about a situation in which the public interest was so vitally concerned.

This was an issue so grave that Dr. Hutchins, the distinguished president of the University of Chicago, was compelled to resign as a representative of the public on the board of control or board of supervisors of the stock exchange. He could not obtain the action which in his opinion was mandatory if the public interest was to be served. Why could not Mr. Douglas be as zealous with respect to the public interest as was Dr. Hutchins?

If Mr. Douglas felt that the S. E. C. did not have any further jurisdiction, then he should have indicated that fact. Language could readily have been employed to make it clear. Why did he have to side with the New York Stock Exchange? Why was it incumbent on Mr. Douglas to say that, for the S. E. C., the case was closed? Was it not even less appropriate for him to say that, for the exchange, it is closed?

That was his statement in an interview at that time, just after Dr. Hutchins had resigned. The least that can be said is that Mr. Douglas' zeal for complete inquiry is less than that of Dr. Hutchins, a representative of the public interest on the board. Dr. Hutchins had the courage of his convictions and did what he believed was right, and when the rest of the board refused to adopt his motion, Dr. Hutchins told them he would resign, and he resigned the next day.

Prior to May 1938 it was already known that important officials and other persons in the New York Stock Exchange had been guilty of serious impropriety in concealing the Richard Whitney embezzlements. This matter was brought up yesterday. Some questions were asked, and I wish to go a little further into it. The so-called reform management of the New York Stock Exchange took over control of that stock market in May 1938. The reform management took no action, either by way of discipline, reprimand, or otherwise, against the officials and other persons who were guilty of the concealment. Indeed, a number of those persons continued in office subsequent to May 1938.

Yesterday the Senator from Connecticut [Mr. MALONEY] raised the issue that in his opinion it was Mr. Martin who caused the resignation of Mr. Whitney; but, according to the

records which I find, that proves not to be the case. I shall point out the facts.

Mr. Douglas made no attack on the new management of the exchange for its failure to take action. Mr. Douglas was not then a candidate for the United States Supreme Court.

That fact may have been significant. I do not know whether it was or not. At any rate, he made no attack on the Wall Street interests for not backing Dr. Hutchins in going ahead with the investigation of the Whitney case, and said the matter was closed so far as he was concerned. However, as I say, he was not then a candidate for the Supreme Court.

In the period between May and November 1938 the serious impropriety of the course of the leading stock exchange officials and others who had concealed the Whitney embezzlements was emphasized more and more by disclosures in the investigation into the Whitney affair. The management of the New York Stock Exchange took no action by way of discipline, or otherwise.

During this entire period Mr. Douglas made no attack upon the stock exchange management. Instead, he highly praised it as a reform group and gave it his support and backing.

He was not then a candidate for the United States Supreme Court.

In November 1938 the S. E. C. issued its report condemning the leading exchange figures guilty of the concealment of the Whitney embezzlements. Mr. Douglas made no mention of the failure of the new management of the exchange to discipline, reprimand, or take any action with respect to the persons guilty of those improprieties. Instead, at the end of the condemnation report Mr. Douglas made it clear that the new management of the exchange was of very different caliber, and in effect praised it highly. That was the effect of the S. E. C. report of the investigation of the charges against Mr. Whitney.

Mr. Douglas was not then a candidate for the Supreme Court.

Toward the end of December 1938 President Robert M. Hutchins, of the University of Chicago, a so-called public member of the Board of Governors of the New York Stock Exchange, resigned because of the refusal of the management of the New York Stock Exchange to take some action looking to disciplining, reprimanding, or taking other corrective steps against the persons guilty of the concealment of the Whitney embezzlements. I have an article on the Whitney embezzlements which is only a dozen pages or so in length. I can read it if desired. It gives the full history of the case. Mr. Douglas did not attack the management of the exchange for voting against Dr. Hutchins' proposal, and thus in effect forcing his resignation from the governing body of the exchange.

I am not personally acquainted with Dr. Hutchins, president of the University of Chicago, but he is very highly spoken of. Newspaper articles connected him and Mr. Douglas as very close friends a year or two ago. Instead, Mr. Douglas made it clear that his intimate association with the New York Stock Exchange management was going to continue unbroken and unaffected.

Mr. Douglas was not then a candidate for the United States Supreme Court.

On March 15, 1939, Mr. Douglas delivered a vigorous attack on proposals submitted to the S. E. C. by the so-called reform management of the New York Stock Exchange and by other exchanges for two amendments of the stock exchange statute.

Mr. Douglas had at that time been an active candidate for the United States Supreme Court for 30 days, and his candidacy had not yet proved acceptable to the President for submission to the Senate. Meantime Mr. Douglas had been criticized for his unduly close association with the New York Stock Exchange and for his failure to deal appropriately with the stock exchange.

On March 28, 1939, Mr. Douglas was no longer a candidate for nomination to the Supreme Court. His nomination had been sent in to the Senate on March 20, and both the subcommittee and the full Judiciary Committee had unanimously reported their favorable recommendation. The press announced that the Senate would confirm the nomination on that day. The interview Mr. Douglas granted on that day was not going to be published until the following day, when, it was thought, he would already have been confirmed by the Senate.

Those are the plain facts, as seems to be apparent from the newspaper articles I have read.

At this time the Investment Bankers Association and other powerful Wall Street groups had been aroused by the report that a subcommittee of the Senate Banking and Currency Committee was favorably recommending the Barkley bill for regulation of the corporate bond indenture activities of big banks and trust companies, such regulation to be conducted by the S. E. C. This bill had been recommended by the President, by the S. E. C., and, in largely the same form, by Mr. Douglas, the latter having made his recommendation in 1937. Mr. Douglas in 1937 urged the very great importance of passing some such bill as an absolute necessity for the protection of investors.

Mr. Douglas in his interview of March 28, published in the New York Times of March 29, 1939, did not attack the Wall Street group and its vigorous opposition to this bill. On the contrary, without specifically mentioning this bill, he in effect said, by means of a general recommendation against any legislation charging the S. E. C. with additional activities, that no such legislation should be passed. In other words, he took sides with the powerful Wall Street groups against the S. E. C. and against the President, and against the very regulatory authority and statutory proposals which he himself had urged upon congressional committees 2 years earlier as essential for the protection of investors.

I have before me the hearing in which Mr. Douglas testified. There are only 62 pages of it, and I do not know but that I would be justified in reading them. He praised the so-called Barkley bill to the skies at that time, and said that it was necessary in order to protect the investors in bonds throughout the Nation. I think something is necessary to protect them, for there have been great losses under the old system of buying and promoting the sale of bonds, appointing certain men to look after them, and so forth. The bill was reported this morning, and I hope it will be passed.

Did the single case of Mr. Douglas' attack on Wall Street, already noted, have anything to do with his desire to get to the Supreme Court? Light is thrown on this question by articles recently published by good friends of his who urged his nomination to the Supreme Court. One of them is Arthur Krock, of the New York Times, who, in its March 26, 1939, issue, explained that the proposals of the stock exchanges attacked by Mr. Douglas on March 15, 1939, should not have been submitted to him at that particular juncture. Mr. Krock explained that Mr. Douglas had then been attacked as not being a liberal; that he had to prove his liberalism; and that it was not a time when he could consider the proposals in a nonpolitical, impersonal way.

Columnist friends of Mr. Douglas subsequently published an article, which appeared in the Washington Times-Herald of April 3, 1939, in which they said that "one decisive influence in making up his—the President's—mind to name Douglas was the S. E. C. chairman's sizzling retort to the Wall Street moguls," that is to say, the attack Douglas delivered against their proposals on March 15, 1939.

It should be repeated that both Mr. Krock and the other columnists just mentioned have been close to Mr. Douglas for some years, were backing him for the Supreme Court long before he was nominated, and may therefore be presumed to know the real facts about what he had in mind when he made the attack on the exchange, the reason he made the attack, and the successful effect it had for himself.

Mr. President, those are my sentiments on this situation. Other Members of the Senate, of course, who have heard my remarks can draw their own conclusions; that is their privilege; but it appears to me that, after what apparently seem to be the facts have been brought out, the name of Mr. Douglas should be sent back to the committee and a full investigation should be made to ascertain whether or not Mr. Douglas is lined up with the stock exchange of Wall Street;

whether he is a pawn, as has been said by one of the newspaper writers, of Wall Street interests; whether he is hooked up particularly with great bankers and other business interests and trust companies; and whether or not he played politics in that charge against the New York Stock Exchange on the 15th of March—5 days before he received the nomination.

I have here a clipping from a newspaper for which I have no particular admiration, but the name of the writer of the article is signed, and I am told that he is a very efficient and trustworthy correspondent. The clipping is from the Chicago Tribune, under a Washington, D. C., date line of March 18. It is entitled "S. E. C. Suppresses Charge Against Own Official—Involves L. A. Pettit and Victor Emanuel—By John Fisher."

I am sorry again that the Chamber is so well emptied, for this is rather an important statement, in my opinion. If it is not true, it should be investigated by the committee that considered Mr. Douglas' appointment, to ascertain its falsity.

WASHINGTON, D. C., March 18.—The Securities and Exchange Commission has "mysteriously" dropped collusion charges against one of its officials, it was learned today. The other person involved is an influential New Deal utilities magnate. The official in the Public Utilities Division of the S. E. C. was tried secretly by the Commission last October and November, but the transcript of the hearing and the report of the examining committee have been carefully suppressed.

The S. E. C. official involved, L. A. Pettit, has been retained and four subordinates in his own department who testified against him have been removed from the scene of friction. Two resigned and the two others were transferred to other divisions.

Mr. President, it is the same old situation of bureau control; when any employee has the courage to complain against something which he thinks is absolutely wrong—when an act has been committed by some of his superiors and he has the nerve and courage to express the conviction that he believes the act is wrong and should be investigated—after investigation the man against whom the charges are made is whitewashed, while the man who has the courage to make the charges is dismissed from office for his good work. A strange situation.

I wish to read a little more from this article:

FEAR PUBLIC KNOWLEDGE

S. E. C. officials are jittery—

This was on the 18th of March—

S. E. C. officials are jittery lest the facts be made public. William O. Douglas, Chairman of the S. E. C. and reportedly the No. 1 candidate for appointment by President Roosevelt to the United States Supreme Court, will neither discuss nor comment upon the case, his office reported today. Furthermore, he will say nothing on whether the official has been definitely cleared of the charges against him.

An aide to Douglas said that "the S. E. C. still considers that its laundry is in its own back yard"—

That is probably the case—

inferring that it is not a matter of public importance.

Oh, no, Mr. President; of course it is not a matter of public importance when a member of an important governmental regulatory body such as the S. E. C. tries to induce and encourage those who are making an investigation of a company in which a friend of the member is interested, to make a favorable report so that his friend may get an advantage. Of course it is not a matter of public interest that when some one has the courage of his convictions to complain against such a man, the laundry is washed in the back yard and nobody knows anything about it. Yes; the back yard is a good place for their laundry; at least they do not dare to bring it out into the light of day; and I do not believe, either, that the Senate of the United States dares to send this nomination back to the committee with instructions to investigate.

Mr. KING. Mr. President, will the Senator yield?

Mr. FRAZIER. I yield.

Mr. KING. I should like to inquire whether the Senator has any information whether Mr. Pettit is still retained in the S. E. C.?

Mr. FRAZIER. Oh, yes; the article sets forth that Mr. Pettit was retained in his job. I have not finished with the story as yet; there is more to it. The most interesting part is yet to come, I will say to the Senator from Utah.

The charges involved Pettit, who is assistant to C. Roy Smith, director of the S. E. C.'s public utilities division, and Victor Emanuel, New York financier, who is president of the Standard Power & Light Corporation, chairman of the Standard Gas & Electric Corporation, and president of the Aviation & Transportation Corporation, old Cord concern. All are Chicago companies.

TESTIFIES FOR PETTIT

Emanuel came from New York to testify on behalf of Pettit and opened his remarks by expressing astonishment that he, a good new dealer, was being questioned in view of his activity in President Roosevelt's 1932 campaign and the vast amount of money he raised. A report to Congress on Democratic contributions shows that Emanuel personally gave $8,500—

Just a small sum—

to the cause in 1932. There were three instalments—$1,000 on May 23, $5,000 on October 10, and $2,500 on October 22.

If that was not enough to whitewash one of his friends, I do not know how much it would take; and his friend was whitewashed, Mr. President. At least that is the supposition, and we cannot find the facts of the case. They have not been given out.

Testimony before the S. E. C. during its investment trust investigation last summer also revealed that Emanuel accomplished through the S. E. C. what he unsuccessfully tried to attain prior to the S. E. C.'s creation—control of the Standard Gas & Electric Corporation.

The contribution gained Mr. Emanuel some more. Besides clearing his friend, who was trying to do something for him, he got control of this big corporation in Chicago.

Pettit, who was brought into the S. E. C. through Emanuel's influence, was accused of trying to gain favorable action by financial analysts in his department on a petition in 1937 of Northern States Power Co. of Minnesota, a subsidiary of Standard Gas.

The Senator from Minnesota is not in the Chamber at the moment. The Northern States Power Co. operates in my part of the country. I am quite familiar with it.

For reclassification of its preferred stock, a procedure which would have benefited Emanuel.

That is what Mr. Pettit was trying to bring about. He was trying to induce the people who were making the analysis and doing the investigating to favor his friend Emanuel. They would not do it and told about it, and the investigation took place.

Emanuel admitted that he had recommended Pettit for a job with the S. E. C. when Ward Perrott, who was director of personnel for the S. E. C. when the Public Utility Division was set up in 1935, asked a partner of Emanuel & Co., investment bankers of New York, where he could get some good men for the Utility Division.

Of course, they would go to the public utilities to get a good man for the Utility Division, and Mr. Emanuel was kind enough to recommend his friend Pettit for the job; and Mr. Pettit was appointed and apparently has made good for Mr. Emanuel. Mr. Emanuel, of course, deserved to be able to name the appointee, because he had contributed the paltry sum of $8,500 to Roosevelt's campaign in 1932. They undoubtedly want some more money for the campaign next year, and they are laying the foundations to get it.

Mr. NORRIS. Mr. President, will the Senator yield?

The PRESIDING OFFICER (Mr. SMATHERS in the chair). Does the Senator from North Dakota yield to the Senator from Nebraska?

Mr. FRAZIER. Yes; I am glad to yield.

Mr. NORRIS. As I understand, the information which the Senator is now giving us comes from the Chicago Tribune.

Mr. FRAZIER. Yes, it does; under date of March 18. There has been plenty of time in which to contradict it.

Mr. NORRIS. Has the Senator any evidence corroborating the Tribune statement?

Mr. FRAZIER. This is the only thing I have. I talked to a reporter of the newspaper, and he spoke in the highest terms of the man who had written the article. In my opinion, the statement would not have stood for that length of time unless there had been more truth than fiction in it.

Mr. NORRIS. The information I was trying to get was whether the statements made in the article are corroborated by any evidence except the Chicago Tribune itself.

Mr. FRAZIER. I have not tried to look it up otherwise.

Mr. NORRIS. The weakness of the statements, as I see the matter, comes from that fact. A charge made by the Chicago Tribune would not be even prima facie evidence of its truth.

Mr. FRAZIER. I stated in the beginning, before I read the article, that I held no brief for the Chicago Tribune. I think the only time they ever mentioned my name in their newspaper was one time when I went down to speak in Chicago at a labor meeting, and a group met me at the station when I got off the train. I was surprised to see so many persons. There were about a hundred persons there, and they had a little band and marched up to their hall, and I was quite delighted with my reception. I think it was the Chicago Tribune which printed an article making some comment on the matter and saying—that was years ago, when I was in office in North Dakota—that only a handful of the thousands of labor men in Chicago met the Governor of North Dakota at the station, and the affair was a fizzle. I read the article at the meeting and said I had been met by the largest number of city people that had ever met me at any railroad station in my life when I went anywhere to speak. Generally I could not get a corporal's guard of city people to listen to me.

Mr. DAVIS. Mr. President, did the Senator give the name of the person who wrote the article?

Mr. FRAZIER. It is by John Fisher, of the Chicago Tribune Press Service.

Here is another article from the Chicago Tribune. This is also by Mr. Fisher, under date of March 20. The headlines are:

EMANUEL WINS HIGH JOBS WITH NEW DEAL'S AID—HEADS FIRMS UNDER S. E. C. JURISDICTION

(By John Fisher)

WASHINGTON, D. C., March 20.—The meteoric rise of Victor Emanuel, New Deal financier, to prominence in American corporate affairs in recent years can be traced directly to his having the right contacts.

This newspaper revealed in a news story last Sunday how Emanuel, of New York and England, was involved in a secret investigation last fall by the Securities and Exchange Commission on charges of collusion between him and L. A. Pettit, Jr., assistant in the S. E. C.'s Public Utility Division.

Close contacts between the two were admitted but Emanuel pointed out how he had aided President Roosevelt's campaign in 1932, contributing $8,500 personally. The S. E. C. higher-ups subsequently hushed the charges.

And so forth, the same as the other story.

Mr. President, I have taken more time than I intended to take. I did not become interested in this nomination at all until my attention was called to the subject by these newspaper articles, and I then looked into it. I have a great deal more material, and could take a great deal more time. I could occupy the rest of the afternoon. In fact, I received a message from some labor representatives asking me to take up the entire afternoon. They said they would agree to get more help tomorrow. I do not know whether or not they can do so. I do not know how many are interested. Very few of the Members of the Senate seem to be interested, and I do not know that it is worth while for me to take up any more time.

But, Mr. President, in my opinion this is an important situation. We are considering confirming the nomination of a young man to the Supreme Court of the United States. He is 40 or 41 years of age, as I understand. He probably will have about 30 years of service on the Supreme bench. As I stated yesterday, so far as I have been able to find, he has not taken any interest in progressive measures affecting the common people, such as labor measures, agricultural measures, or the rights of the common people in general.

These newspaper articles indicate that while the name of Mr. Douglas was being considered, and he was being criticized by some of the liberal magazines for not being as liberal as he was supposed to be, and it was stated that he was lined up with Wall Street, on the 15th of March, 5 days before his nomination came in, he had an opportunity to speak, and he took the opportunity, and made a red-hot criticism of Wall Street interests, and "riled" them very much. The reporter said two or three times that the Wall Street interests "saw red"; and 5 days later his nomination came to the Senate. Some of the newspapers, of course, said that Mr. Douglas had proved his right to be a liberal by criticizing Wall Street. His nomination came to the Senate; and on the morning of the 28th of last month the newspapers said that the nomination was going to be confirmed that day by the Senate, probably unanimously. For some reason or other the majority leader moved an adjournment without the Senate having an executive session. The Senate adjourned early that afternoon, as I recall, about half past 2, or some such matter; I do not know why; but, anyway, the Senate adjourned without having an executive session, and Mr. Douglas' name did not come up, and the interview was printed in the New York Times on the next day, March 29. In that interview Mr. Douglas practically repudiated all he had ever said in criticism of the New York Stock Exchange, and made a good fellow of himself, and even indirectly took at least a sort of a left-handed "swat" at the S. E. C., which he was about to leave, and said, in substance, that they did not need to branch out any more; that they did not need new legislation; that they were at the peak of their usefulness, and so forth.

Now, Mr. President, another case comes up, according to the Chicago Tribune, of a good supporter of the present administration contributing money, a man who had gotten a friend appointed, and this friend was trying, through a crooked deal, apparently, according to this report, at least, to get something for the friend who had so kindly gotten him appointed. An investigation was started, and all that resulted from the investigation, apparently, was that the two men who had the courage to complain about what they thought this man was doing that was wrong were dismissed for their courage and their faithfulness to the American citizens in protecting the rights of the people who were paying their salaries. They were dismissed from their positions, and two more were transferred to some other division, "removed from the point of friction," the article said. There evidently was some friction.

Mr. President, I say again that before the Senate confirms the nomination of a man for the United States Supreme Court, for service for possibly 30 years on the highest tribunal in this Nation, or in the world, so far as that goes, it seems to me there should be some investigation of what I will call these newspaper charges, because that is all I have had time to develop. But I assure my colleagues that there is much more that could be presented if I were given time. I could take just as long tomorrow on new matter which has not been touched as yet as I have taken today, if I were given the time to have it looked up.

I think that under the circumstances the nomination of Mr. Douglas should be sent back to the Committee on the Judiciary of the Senate with instructions to the committee to investigate a little further some of these charges, to convince themselves whether or not Mr. Douglas is really working with Wall Street and has been friendly to Wall Street, as the newspapers have said, all these months, or whether or not this man Pettit got a square investigation, whether he was whitewashed or not, whether or not politics was played in the report on Wall Street on the 15th of March.

Mr. President, the progressive, thinking people of the Nation would like to know what the facts are, and I think they are entitled to know. But they cannot find out the facts unless a further investigation is made by a committee of the United States Senate.

I spoke of the fact that Mr. Douglas was not willing to go along with the president of the Chicago University, who had accepted a position representing the public interest on the governing board of the stock exchange of New York, and when he found, through some investigation conducted there, that the Whitney case had not been thoroughly taken care of, he resigned. I have an article on the Whitney case here.

Mr. HATCH. Mr. President——

The PRESIDING OFFICER. Does the Senator from North Dakota yield to the Senator from New Mexico?

Mr. FRAZIER. I am glad to yield.

Mr. HATCH. Does the Senator happen to know the attitude of the president of the Chicago University as to Mr. Douglas' nomination to the Supreme Court?

Mr. FRAZIER. According to the newspaper reports again, he was a close friend of Mr. Douglas, and I take it he heartily endorses him, but I do not know.

Mr. HATCH. For the information of the Senator, my information is that he was heartily in favor of the nomination, and is in favor of its confirmation.

Mr. NEELY. Mr. President, will the Senator yield?

Mr. FRAZIER. I yield.

Mr. NEELY. The Senator has indicated that he objects to the confirmation because Judge Douglas has made no record in matters pertaining to labor and agriculture.

Mr. FRAZIER. And civil liberty.

Mr. NEELY. Yes; and civil liberty. Let me invite the attention of the able Senator from North Dakota to the fact that because of the efforts of Judge Douglas the following was written into the chapter of the bankruptcy law which pertains to corporate reorganization:

> The judge may, for cause shown, permit a labor union or employees' association, representative of employees of the debtor, to be heard on the economic soundness of the plan affecting the interests of the employees.

I am reliably informed that the language which Judge Douglas proposed was even more favorable to labor than that just quoted, which the Congress approved.

It is earnestly submitted that Judge Douglas' action in this case alone proves that he is not only friendly to labor, but that he has been on the alert to protect the interests of those who toil.

In response to the Senator's objection to the nominee on the ground that he has made no record relative to agriculture, let me state that in the course of a conversation with Mr. Edward A. O'Neal, president of the American Farm Bureau Federation, this afternoon, he informed me that he personally favors the confirmation of Judge Douglas' nomination, and that in his opinion the confirmation is generally favored by the American farmers.

Mr. FRAZIER. Mr. President, of course the amendment the Senator has read with regard to the Bankruptcy Act sounds very good. As I understand, Mr. Douglas specialized in bankruptcy law while he was holding the chair of law in Yale University and undoubtedly was very familiar with bankruptcy legislation.

So far as the recommendation of Mr. O'Neal goes—perhaps I had better not say what I had thought of saying, but I do not think Mr. O'Neal is much of a representative of the farmers. Anything Secretary Wallace wants, Mr. O'Neal is for a thousand percent, and has been all during the present administration.

Mr. President, I do not think there is any use of my taking any more time. Those who have been kind enough to listen to my remarks certainly have gotten my viewpoint. I personally should like very much to see the nomination go back to the committee for reconsideration; but, as has been before stated, the subcommittee and the full committee reported the nomination unanimously. Apparently there was no objection raised in the committee. I do not know how far the committee went in attempting to get any facts, or what they did. At any rate, it seems to me that the nomination should go back to the committee for further investigation.

I appreciate the kind attention of Senators in listening to what I have had to say.

The PRESIDING OFFICER. The question is, Will the Senate advise and consent to this nomination?

Mr. MALONEY obtained the floor.

Mr. HATCH. Mr. President, will the Senator yield?

Mr. MALONEY. I yield.

Mr. HATCH. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk called the roll, and the following Senators answered to their names:

Adams	Donahey	La Follette	Radcliffe
Andrews	Downey	Lee	Reed
Ashurst	Ellender	Lodge	Reynolds
Austin	Frazier	Logan	Russell
Bankhead	George	Lucas	Schwartz
Barbour	Gerry	Lundeen	Schwellenbach
Barkley	Gillette	McCarran	Sheppard
Bilbo	Glass	McKellar	Shipstead
Bone	Green	McNary	Smathers
Borah	Guffey	Maloney	Smith
Brown	Gurney	Mead	Stewart
Bulow	Harrison	Miller	Taft
Burke	Hatch	Minton	Thomas, Okla.
Byrd	Hayden	Murray	Thomas, Utah
Byrnes	Herring	Neely	Townsend
Caraway	Hill	Norris	Tydings
Chavez	Holman	Nye	Vandenberg
Clark, Mo.	Hughes	O'Mahoney	Wagner
Connally	Johnson, Calif.	Overton	Wheeler
Danaher	Johnson, Colo.	Pepper	White
Davis	King	Pittman	Wiley

The PRESIDING OFFICER. Eighty-four Senators having answered to their names, a quorum is present.

Mr. MALONEY. Mr. President, I shall not unduly detain the Senate, and under ordinary circumstances I should not now be speaking in behalf of Mr. Douglas. So much has been said and written about him in most of the newspapers and periodicals of the country during the past several years, and more particularly during the past month, that I think the Members of the Senate and the people of the country are adequately informed concerning the man, his brilliance, his courage, and his integrity. But for the RECORD I shall make a statement in order that at some time in the future those who might have occasion to look back upon the debate in the Senate will find therein some answer to the charges, inferences, and inferential accusations of the Senator from North Dakota [Mr. FRAZIER].

I am certain, as are other Members of the Senate, that the Senator from North Dakota is inspired by high motives, but Mr. President, I cannot help but feel that someone somewhere has preyed upon his sincerity and devotion to the cause of good government. The Senator said yesterday—and I referred to it at the time, and wish again today to remind the Senate of his statement—that he might be wrong in everything that he said, and, without intending to be unkind, I should like to say that, in my opinion, he is wrong with respect to almost everything he has said.

Mr. President, in contradiction of the repeated statement of the Senator from North Dakota that Mr. Douglas was a candidate for this high office, please let me say that he was at no time a candidate for the office.

The subcommittee appointed by the chairman of the Committee on the Judiciary served notice to the country, as well as to the Congress, that committee meetings would be held and an opportunity would be granted to anyone who wished to make a statement to appear before the committee. Not a single voice in the entire Nation was raised against Mr. Douglas; and during the time between the first mention of the possibility of his appointment by the President until this day, insofar as I have been able to observe, there has not been a real criticism of the appointment.

Mr. President, I believe that Washington is the best advised and best informed city in the world. It has the good fortune to have in it the outstanding newspapermen of the world, and if there was something wrong they would have found it out by now. But, quite to the contrary, these men of unusual ability and training have combed the life of Chairman Douglas of the Securities and Exchange Commission from the day of his birth; and we find, as a result, perhaps as romantic a tale as has been told since the Civil War.

It seems to me the appointment is an inspiration to the young men of the land, showing that the log-cabin days are not over, and that a man can rise to the heights by his own brilliance and courage and honesty and faithfulness of purpose. The life of William O. Douglas affords to someone with a gift of oratory the subject for a splendid speech.

Mr. President, much has already been said concerning the life of Mr. Douglas. I have no desire greatly to enlarge upon that subject. Even if I had the desire I do not have sufficient

gift of language to do justice to the outstanding character whom we are now discussing.

The Senator from North Dakota in commenting at length upon the nomination of Mr. Douglas, and reading from various periodicals, and seeming in other instances to quote from them, for himself only expressed the fear that Mr. Douglas was not sufficiently concerned with civil liberties, with the plight of labor and problems of labor, and with agriculture. It so happens that the nominee is from my State. It also happens that he is an intimate and dear friend of mine. I know that there is no one within or without the Senate who has a greater concern for the civil liberties of this Nation than has Mr. Douglas. When he goes upon the Supreme Court bench, as I am confident he will, if he makes mistakes with respect to labor legislation or labor laws—and I doubt that he will—Senators may be certain that such mistakes, if they happen, will be on the side of labor, because of the compelling sympathy for labor that has been aroused in him as a result of his own life of hardship and toil.

Mr. President, I shall not delay action upon the nomination for very long, but I should like to take sufficient time to tell the Senate again the story, in the limited language which I possess, of a young man who had the reins of responsibility handed to him when he was a mere child, how he accepted responsibility, and how he has driven safely and sanely and courageously down the road during all the following years. In my humble opinion there is no more beautiful or inspiring story in all the history of the Nation than that of this man, who, unlike some other men, denied himself the rich opportunity of material reward during late years, and clung steadfastly to a career which he carved out for himself in early days by devoting his abilities, his energy, and his life to the public service and the common good. He has been here since the beginning of the difficult days, Mr. President, accepting whatever positions came to him, and contributing a full measure of devotion and energy to the responsibilities delegated to him as a result of those positions.

I know this speech is not necessary; but the Senator from North Dakota, without intention, let me say again, with sincerity of purpose, by inference made certain charges which cannot be ignored. He seemed disturbed by the fact that Mr. Douglas and the New York Stock Exchange have worked closely together.

One of the outstanding achievements of the Roosevelt administration has been the demonstration by the Securities and Exchange Commission that it can obtain the cooperation of business. This is a significant achievement. It is by far preferable to a condition of constant turmoil and battle.

Such cooperation does not entail "selling the public down the river," as the Senator from North Dakota, I think, in a careless moment, suggested yesterday. Nor does it entail abdication by an agency such as the Securities and Exchange Commission. Rather it means that the agency instead of wasting its energies on an impossible fight to compel obedience to the law, carries business with it along the road laid down by Congress. This accomplishment is a quality of great administration, and is the notable achievement which has gained for William O. Douglas his great and well-deserved reputation.

We all know that once the business community accepts the letter and spirit of the law, there results a situation far preferable to the chaos which follows when business constantly fights the law. The great accomplishment of the Securities and Exchange Commission is that it has demonstrated that Government and business can pull together. If we had more pulling together of that kind, we should now be further along in our whole program.

So it is that the entire public, whatever its political views, has recognized the Securities and Exchange Commission under Mr. Douglas' chairmanship as the most successful agency of this administration. Without yielding an ounce of authority, or relaxing the vigor of its administration, it has succeeded in bringing about the cooperation of business in enforcing the laws of the country.

The Senator from North Dakota also said, or implied, that Mr. Douglas took one public position on March 15, 1939, with regard to amendments to the Securities Act and the Securities and Exchange Act, and subsequently reversed himself. Personally I am much concerned with that charge, Mr. President, because I was a Member of the Congress and a member of the committee which prepared the original Securities Act, and I have attempted as best I could to live with it and to watch it. I have been vitally concerned with it since the very beginning in 1933.

When I read the statement of the Securities and Exchange Commission of March 15, 1939, on the suggestions for amendment of the Securities Act and the Securities and Exchange Act made by the so-called Hancock committee, one thing deeply impressed me. It was the fact that while the Securities and Exchange Commission had been willing to cooperate in enforcing the law, it would not in any form or manner whatever be a party to emasculating the law.

The Hancock report, as I have read it, would admit back into the market so-called "good" pools. In 1934 the Senate rejected arguments advanced to it by representatives of the New York Stock Exchange that "good" pools should be permitted. They, along with all other pools, were outlawed. The position taken on March 15 by the Securities and Exchange Commission reaffirmed the soundness of the position of the Congress in 1934.

As I read the record, and as I am sure is the fact, the Securities and Exchange Commission has not altered one iota the position which it took on March 15. In that connection, it is interesting to note a letter released to the press on March 20, 1939, from George C. Mathews, Acting Chairman of the Securities and Exchange Commission, to Mr. Martin, president of the New York Stock Exchange. In that letter Mr. Mathews, speaking for the Commission, stated:

> You know our views on section 9 (a) (2) and on certain other matters recently suggested.

Section 9 (a) (2) is the manipulation section, which the Hancock committee report sought to weaken. Mr. Mathews, speaking for the Commission in place of Chairman Douglas, reaffirmed the Commission's attitude on that point. There is, therefore, no retreat, no change in position, no alteration of views whatever. However, Mr. Mathews went on to say—and I quote again:

> But, apart from those, I assure you that any suggestions which you may have to offer, touching the possible improvement of the act or the possible modification of regulations issued thereunder, will have the prompt consideration of the Commission. The round table seems to us to afford the best method of pursuing any such suggestions.

This position seems absolutely above reproach. Is any public agency justified in taking the position that it has reached the point of perfection? Can anyone possibly criticize any such agency for saying to a stock exchange or to any business that it will be glad to consider any suggestions touching the improvement of the statute or the improvement of its regulations? It seems eminently fair and reasonable and consistent with its public duties and responsibilities for any such agency at all times to take exactly that position.

So by March 20, 1939, the position of the Securities and Exchange Commission with respect to the proposals of the Hancock committee had not changed one iota.

What subsequently happened? The article by Mr. Krock under a Washington date line, March 28, is absolutely devoid of any statement inconsistent with the position of the Securities and Exchange Commission with respect to the Hancock committee report. In that article Mr. Douglas is said to believe that any agency such as the Securities and Exchange Commission should not be allowed to become too big and to cover too much ground. Will any Senator deny that bigness itself creates a grave problem? Let me say at this point that that situation has been pointed out in the past by no less a personality and great figure than the present Chief Justice of the United States.

In the article referred to Mr. Douglas is quoted as saying that the first responsibility of an independent public agency such as the S. E. C. is to Congress. Will any Senator deny

the soundness of that conclusion? The only reference to amending the statutes is contained in the following paragraph from Mr. Krock's article:

> The Chairman went on to say he thought that at some later time an eminent drafting committee, representing all legitimate interests, should undertake to consolidate and perfect the Securities Act and the Securities Exchange Act, which are the legal charters of the Securities and Exchange Commission. They were, he pointed out, written separately and somewhat to meet two different situations. Necessarily therefore duplications, ambiguities, and probably some extra and unintended exactions on honest business are to be found. But the quest for recovery is affected now by any tampering with laws in the category of these two acts, he said, and revisions can well await a more propitious time.

As I read that statement, it merely means that at some future time the various statutes administered by the Securities and Exchange Commission can be consolidated in the interests of efficiency, and that certain ambiguities can be eliminated. It would be most surprising to anyone acquainted with legislation to think this was not so; but that certainly is a far cry from substantive changes of the character covered by the Hancock committee. No innuendo, no inference would justify any conclusion from Mr. Krock's column that any of the suggestions in the Hancock committee report should at some time be adopted.

The words used by Mr. Krock, "ambiguities and duplications," certainly do not mean, and cannot by any stretch of the imagination be interpreted to mean, the reintroduction into the market of pools. One thing is very clear from Mr. Krock's article, and that is that Mr. Douglas does not feel that the Congress is to concern itself with highly technical and relatively unimportant suggestions designed to improve and polish the securities and exchange statutes. If, as Mr. Douglas suggests, $15,000,000,000 worth of securities have been successfully registered under the Securities and Exchange Act, that statute is not impairing the capital market.

I wish to speak briefly, if I may, Mr. President, on the profession by the Senator from North Dakota of some anxiety because Commissioner Douglas failed to denounce the Hancock report until it was presented to him. This charge seems to me at best to be ridiculous.

As I understand the press reports, the Hancock committee report was not delivered to the S. E. C. until the afternoon of March 14. As I also understand the press reports, the S. E. C. was not represented in that conference. As a matter of fact, it would have been highly improper if it had been so represented. However that may be, the report was not actually received until March 14. How could anyone comment publicly upon an unseen report?

To be sure, there were in the days preceding March 14 various so-called "dope" stories in the press prophesying what that report would contain; but, in fairness to the members of the Hancock committee, would it have been just to denounce those views in advance of their adoption by the committee? How could anyone tell what the committee would report? Perhaps those newspaper articles were inspired. Perhaps they were "trial balloons." I do not know. Nor do I know how anyone else could have known. After all, this is, and will continue to be, a free country.

People have a right to talk on any subject. What would we think of one of the independent agencies of the Government if it tried to prevent representatives of business meeting to discuss problems of such agency? What would we think of any public official who had a taboo list of topics which could not be discussed? I say that the S. E. C. could be justly criticized if it had at any time attempted to choke off free public discussion of these important problems. However, having received the report of the committee, it was under the strong public duty of speaking out. If the S. E. C. had delayed a few days to consider the Hancock report, it might well have created the public impression that there were matters in the report for negotiation and discussion. I say that, in the public interest, it owed a duty to speak clearly and promptly on the matter of stock-market pools; and Chairman Douglas did speak. If the Commission had not done so, or if the chairman had not done so, it would have been guilty of misleading the public as to the reasonableness of those proposals. That it could not have spoken earlier is evidenced by the fact that it did not receive the report until March 14.

Mr. President, another one of the matters to which the able and conscientious senior Senator from North Dakota referred is the Whitney case. As I recall, the Senator from North Dakota said, or inferred, that Mr. Douglas failed to take action on the Whitney case after the New York Stock Exchange refused to discipline the members involved. There are several factors relating to this charge which should be noted.

In the first place, as I read the public record, it was the S. E. C. which broke this case within 12 or 14 hours after its ascertainment of the facts. That was on March 8, 1938.

In the second place, it was the vigorous prosecution by the S. E. C. which resulted in the entire disclosure of all the unsavory facts relating to that episode. Public hearings were conducted by the S. E. C. during the spring of 1938, and a penetrating report on that subject was written and made public. For fairness and for thoroughness that report, in my opinion, is one of the outstanding public documents of our period.

In the third place, I understand, from the public record, that the whole matter was referred to the stock exchange for appropriate action. I also understand that the stock exchange subsequently failed to take any action. On that point I think certain facts are extremely pertinent. One may ask why the S. E. C. did not take direct action. I understand it was not done for the very simple reason that, aside from Richard Whitney, who was in prison, none of the other persons involved had violated any provisions of the Securities and Exchange Act of 1934 or the rules and regulations thereunder.

I am sure there must have been many other cases which the S. E. C. for similar reasons has referred to the stock exchanges. What else is there that the S. E. C. can do under such circumstances? It denounced the conduct of various persons in its public report. Is it to keep on denouncing them continuously, or is the Government really anxious to create good feeling with business?

Furthermore, what would we think of an agency that attempted to take action which it had no vestige of authority to take? Is the S. E. C., or any other agency, because it thinks someone has engaged in improper conduct, authorized or justified, under this free Government, in taking extralegal action? Mr. President, such a thing is unthinkable. If the S. E. C. had attempted to do more than it did, it would have been guilty of usurping powers which the Congress had not bestowed upon it, and it could quite properly have been haled before the Congress. Unless an agency such as the S. E. C. should stick rigorously to its legal powers, we would have in this country the worst form of oppression imaginable. Certainly it cannot be said that, on the basis of its outstanding public record, the S. E. C. has failed to take any action which it could properly and legally take. Any other conclusion is defamatory in nature.

Mr. President, the Senator from North Dakota expressed much worry about the attitude of Mr. Douglas on the subject of labor. I have previously said this afternoon that I enjoy and am extremely proud of the intimate friendship of Mr. Douglas. I suppose, although I have not been here very long, that there is not a Member of the Congress who has any question about my attitude concerning labor.

I cannot recall that I have yet voted against a labor proposal since I have been a Member of Congress, and more particularly as a Member of the House I labored to the best of the humble and feeble abilities I possess in the early days of the present administration to secure the enactment of laws concerned with the plight of labor and designed to improve and having the effect of improving the conditions of labor. I was distressed, because of this friendship, to hear the Senator from North Dakota say this afternoon, without calling the name, that some one connected with labor was anxious that the confirmation of this nomination be delayed.

I presume it is only natural, Mr. President, that a man engaged in so responsible and rigid a regulation of the affairs

of business as is the Chairman of the Securities and Exchange Commission at some place along the line, sticking to the task that is his, should tread upon the toes or trespass upon the liberties of some individual.

Mr. NEELY. Mr. President, will the Senator yield?

Mr. MALONEY. I yield.

Mr. NEELY. Mr. President, I inquire of the able Senator from Connecticut if it is not a fact that no objection to the confirmation of Mr. Douglas' nomination has been voiced by any labor organization or any representative of a labor union?

Mr. MALONEY. I thank the Senator for asking the question. Of course, he knows, as the country knows, that not only did any representative of labor fail to make a protest, but there was not a single one of the 131,000,000 people of the country who appeared to express a word of protest against the nomination of Mr. Douglas.

Mr. NEELY. And is it not a fact that neither the Congress of Industrial Organizations nor the American Federation of Labor has to this hour objected to the confirmation of Mr. Douglas' nomination?

Mr. MALONEY. That is entirely true, so far as I am aware. But, Mr. President, I should like to go beyond that and say that I cannot help but feel that those sincere members of the C. I. O. and the conscientious members of the American Federation of Labor who are anxious to advance the cause of labor and who are anxious to see labor accorded a full measure of justice applaud the nomination of Mr. Douglas, and they must be grateful to the President for the unusual selection he has made to the Supreme Court.

Mr. KING. Mr. President, will the Senator yield?

Mr. MALONEY. I yield.

Mr. KING. I do not think what I am about to say is any qualification of the Senator's statement. However, I was a member of the Judiciary Committee, as the Senators knows, and had the pleasure of moving that the nomination of Mr. Douglas be reported favorably to the Senate. The only communication that came to the commitee, so far as I am advised, was from some distinguished gentleman or extinguished gentleman—I do not know which—who said that the Justices of the Supreme Court ought to be prohibitionists.

Mr. MALONEY. Mr. Douglas could not qualify under such a restriction.

Mr. KING. The gentleman in question, however, had no objection to Mr. Douglas.

Mr. ASHURST. That is correct.

Mr. MALONEY. Mr. President, I have no desire to burn incense to myself on this occasion, but if I have ever been accused of radicalism back in my State it is on the ground that I am an extremist in my labor views. I know the attitude of Chairman Douglas. He is not an extremist. He has had the benefit of much more extensive training than I have had. He is a deep student of the law, and he has that rare patience that comes to men who have known the bitter struggles of life.

I should like to say again, because at the moment labor is a part of the discussion, that if mistakes are made on matters concerning labor, and Mr. Douglas is among those in error, in my opinion the mistakes he makes will be on the side of labor; and I will state that that is where I myself should like to see the mistakes made.

Mr. Douglas' professional and public life have centered upon his chosen task of cleaning up and improving our financial system. Consequently, he has had few occasions upon which to express his views about labor; but on those few occasions he has spoken and acted so as to leave no doubt that he is aware of labor's problems, and is sympathetic to its proper aspirations.

As Chairman of the Securities and Exchange Commission he has won the loyalty and devotion of all the employees of that agency because of his absolute fairness, and his sympathy with their problems. Recently he issued a statement on a career service for the S. E. C. which shows not only the qualities of a great administrator but also a sympathetic understanding of the problems of employees, whatever their rank.

The first job that Mr. Douglas did as an official of this administration was as director of the Protective Committee Study of the Securities and Exchange Commission. In this connection Mr. Douglas insisted upon labor's right to be heard in connection with the reorganization of the businesses in which they were employed.

In part I of the report prepared by Mr. Douglas and transmitted by the S. E. C. to Congress as a result of this study, the following recommendation for participation of employees in reorganization proceedings was made (p. 901):

> 5. While control of the (reorganization) proceedings should lie in the hands of bona fide security holders and their direct representatives, participation in the proceedings should not be denied other interests. Thus, management should be accorded ample opportunity to be heard. By the same token, representatives of the employees of a corporation should have a right to be heard on matters connected with proposed plans of reorganization which affect their interests.

Mr. President, in connection with the Chandler bill, to which the able and distinguished Senator from West Virginia [Mr. NEELY] made reference in a brief colloquy during the discussion of the Senator from North Dakota, an amendment of the reorganization provisions of the Bankruptcy Act, Mr. Douglas gave concrete expression to his conviction that employees have a right equally with management and stockholders to be heard concerning the reorganization of companies which have been built up in part as a result of their labor. As originally suggested by Mr. Douglas and introduced in the House of Representatives by Representative CHANDLER, the bill provided (H. R. 6439, 75th Cong., 1st sess., subsec. h (8)):

> Labor unions and employees' associations, representative of employees of the debtor, shall have the right to be heard on the economic soundness of any plan or plans and any provisions thereof affecting the interests of employees.

That is the quotation previously referred to by the Senator from West Virginia, and I think the Senator said that that in itself was to him satisfactory proof of the great interest of this distinguished nominee for the office of Justice of the Supreme Court of the United States.

At the hearings before the Judiciary Committee of the House Mr. Douglas strongly urged his views in this respect. He said in part—hearing before the Committee on the Judiciary, House of Representatives, Seventy-fifth Congress, first session, on House bill 6439 as reintroduced and reported as House bill 8043, June 3, 1937, pages 188–189:

> This, in our judgment, is a proper recognition of the fact that the interests of management should not be neglected; that it should be accorded ample opportunity to participate in the proceedings and to express its views. At the same time, they should not run the whole show. Now, the Chandler bill makes a very significant advance by broadening the concept of interested persons to include representatives of employees of the debtor. The bill provides (and I might say that this is the recommendation to Congress of the Securities and Exchange Commission, that is, we take full responsibility for that) that labor unions and employees' associations, representatives of employees of the debtor, shall have the right to be heard on the economic soundness of the plans and any provisions thereof affecting the interests of the employees. Now, in many reorganizations in the past courts have been sensitive to the interests and requirements of labor. In other instances such factors have not been adequately considered. The Chandler bill in this respect makes a modest beginning by permitting labor to express its point of view on the plan through their representatives.

In the course of these hearings Mr. Douglas defended his position on this point with sincerity and ability in the face of rigorous examination by Mr. MICHENER, Representative from Michigan. As finally enacted into law, the Chandler bill did not go as far as Mr. Douglas urged. It did not give labor unions or employees' associations an absolute right to be heard concerning reorganization plans, but permitted the judge, for cause shown, to allow them to be heard on the economic soundness of a plan affecting the interests of the employees. The provision, section 206, is as follows:

> The judge may, for cause shown, permit a labor union or employees' association, representative of employees of the debtor, to be heard on the economic soundness of the plan affecting the interests of the employees.

In a speech before the National Association of Credit Men on June 23, 1937, Mr. Douglas explained at greater length the

reason for his advocacy of the labor provision in the Chandler Act. He stated:

Labor unions and employees' associations, representative of employees, also are given the right to be heard on the economic soundness of plans and on provisions thereof affecting the interests of labor. The advisability of this provision is clear. Just as the management has an interest in the enterprise which the reorganization plan may vitally affect, so labor is concerned with the soundness of plans. Their jobs, their livelihood, depend upon a sound capital structure and a healthy business structure.

I should like parenthetically to say, in the middle of this statement by Mr. Douglas, that if that is not an expression of sound American principle, if it is not the kind of doctrine we need, if it is not the sort of policy advocated by the careful, thinking people of this generation, then I do not understand what is.

Their jobs, their livelihood, depend upon a sound capital structure and a healthy business structure. They often receive the direct impact of default, for that often means labor displacement. The employees are likely to be primarily concerned with the economic soundness and feasibility of the plan, so that the current reorganization will not be the forerunner of another disastrous collapse. Consequently, it is highly desirable that the court and the trustee have the benefit of the suggestions and criticism of representatives of employees with respect to the reorganization plan. And it is only simple justice that these groups, which are vitally affected by the collapse of business and which are essentially concerned with the stability of business, should have an opportunity to express their opinion on the economic soundness of plans and other aspects which affect their interests.

Mr. President, for the comfort that I know it will give the Members of the Senate, who seem to be so attentively listening and who are so impatiently giving me this much time, let me say that I shall not be much longer, but while on the subject of the possible interests of this nominee I do want to refer briefly to the problem and the plight of the interests of labor.

I desire to read—and I am sorry the Senator from North Dakota [Mr. FRAZIER] is not in the Chamber at the moment—from a speech which Mr. Douglas delivered before the Bond Club of New York. It was a famous speech. It was delivered before a group of men engaged in the banking business—representatives of Wall Street. There was no applause for the speech there, although it received widespread and loud acclaim throughout the country. I shall read just a portion of that very interesting speech, which I presume is one of a very great many reasons why the President of the United States was attracted to this brilliant and available man, who, I am certain, never lifted a finger, or encouraged the lifting of a finger, to bring about this highest honor that can come to a member of the legal profession.

I read from that speech:

The labor problem which I mentioned is one of the pressing contemporary conditions which cannot be imperiously treated. Management has a place in our economic sun; but so does labor; so does the investor; and so does the consumer. The real owners of these industrial empires have a growing feeling of distrust and lack of confidence in a management which treats imperiously, unfairly, or selfishly the contemporary demands of labor; they have an increasing recognition of the fact that mid-Victorian attitudes are neither wise nor expedient on the one hand nor fair and equitable on the other; they have a growing resistance to any course which will sacrifice and not protect the human values at stake. Ways must be found to make management responsive to the desires and demands of the real owners of the business. To allow management to continue to place itself above or to pay no heed to the interests of labor, investors, and consumers is to invite disaster. Remote control by an inside few of these fundamental economic and human matters is fatal. There can be in our form of corporate and industrial organization no royalism which can long dictate or control these basic matters.

While the Senator from North Dakota is a champion of labor, I doubt that in all his courageous and interesting and untiring career he ever uttered words that more clearly or effectively or eloquently expressed an interest in labor than those found in this one of a great many utterances of the Chairman of the Securities and Exchange Commission. It was deeply disappointing to me that the Senator from North Dakota, who seems to have been engaged in intensive research during the past few days, had not been able to find this address and others like it, at least one more of which I am going to read in a few moments.

Mr. NEELY. Mr. President——

Mr. MALONEY. I yield to the Senator from West Virginia.

Mr. NEELY. Will the Senator please state when that speech was delivered?

Mr. MALONEY. This speech, and I should like to say again that this was a much-talked-about speech, was delivered before the Bond Club of New York on the 24th of March 1937, at a time when Mr. Douglas was greatly concerned in attempting to purify and correct the abuses in the financial system which contributed so much to the downfall of the business empire, and created the chaos from which we are trying so hard to extricate ourselves.

Mr. NEELY. And, of course, long before anyone ever suggested that Mr. Douglas should be made a member of the Supreme Court.

Mr. MALONEY. Let me say in answer to the Senator from West Virginia, because I know Mr. Douglas to be a self-effacing, modest, and retiring man, that despite the ambitions that must have been in his breast, at that time a place on the Supreme Court was farther away from his mind than it was from mine, and I am not a member of the legal profession.

I should like to read a very small part of a speech which was delivered at the University of Chicago, of which the much-talked-of Dr. Hutchins is president, and I say "much-talked-of" in connection with the address of the Senator from North Dakota. I should like to add to the earlier suggestion made by a Senator on the floor that it is my understanding that among those who are most appreciative of the contribution Mr. Douglas can make to the Supreme Court is Dr. Hutchins.

I read briefly a comment from the speech to which I have made reference:

High finance has the following characteristics. In the first place it is nothing but a game—a game played for large stakes. Those stakes are other people's money or control over other people's money. Under the aegis of high finance, business becomes pieces of paper—mere conglomerations of stocks, bonds, notes, debentures. Transportation, manufacture, distribution, investment become not vital processes in economic society but channels of money which can be diverted and appropriated by those in control. The farmer with his raw materials, the laborer whose blood and sweat have gone into the steel and the cement, the investor and the consumer who are dependent on the enterprise, become either secondary rather than primary, or inconsequential rather than paramount. Business becomes not service at a profit, but preserves for exploitation. The basic social and economic values in free enterprise disappear. For such reasons one of the chief characteristics of such finance has been its inhumanity. Its ruthlessness has precluded consideration of human values. Its predatory nature has excluded regard for all social values.

Mr. President, I wish briefly to refer to a study directed by Chairman Douglas.

At the conclusion of a study of protective and reorganization committees which Douglas conducted for the S. E. C., he made certain recommendations which were transmitted to Congress by the S. E. C., and which demonstrate not only his legal ability and statesmanship, but also his opposition to the abuses of high finance. He recommended a complete overhauling of the machinery of corporate reorganization by which the powerful financial interests have managed to perpetuate themselves in control at the expense of labor and investors. He condemned those investment bankers who, with their skill and prestige, inflict further losses upon investors whom they had induced to place their money in enterprises which subsequently foundered. He advocated that investment bankers be disqualified from serving on protective committees or otherwise occupying controlling positions in the reorganization process. He urged that an independent trustee be appointed by the court to guide the reorganization of corporations in the interest of all who had a genuine stake; and he had the courage and wisdom to vigorously criticize members of his own profession for their conduct in reorganizations.

He criticized lawyers who serve conflicting interests; for the first time he showed that, instead of their being mere tools to carry out the wishes of the great financial interests, they were frequently the generals who conceived and executed

ways and means of enriching the financial powers at the expense of investors and labor. Not only did he call attention to this abuse by lawyers, but he also advocated legislation which would deprive lawyers affiliated with a company's management and its bankers of some of the juiciest plums cherished by the legal profession. He proposed—and Congress enacted into law—a prohibition upon lawyers who were affiliated with the old management or its bankers from being trustees for bankrupt estates or attorneys for the trustees.

Let me briefly refer to the public record of Chairman Douglas' activities in connection with the regulation of the New York Stock Exchange by the S. E. C.

On November 23, 1937, 2 months after he became Chairman, Mr. Douglas, on behalf of the full Commission, issued a statement demanding that stock exchanges reorganize their methods of government in the public interest. He said in part:

> Operating as private-membership associations, exchanges have always administered their affairs in much the same manner as private clubs. For a business so vested with the public interest, this traditional method has been archaic. The task of conducting the affairs of large exchanges (especially the New York Stock Exchange) has become too engrossing for those who must also run their own businesses. And it may also be that there would be greater public confidence in exchanges * * * which recognized that their management should not be in the hands of professional traders but in fact, as well as nominally, in charge of those who have a clearer public responsibility.

The effect of the Commission's demand for stock-exchange reorganization was so strong that almost immediately a substantial portion of the membership of the New York Stock Exchange began a movement for a reform administration.

Under pressure from the Commission a committee headed by Carle C. Conway was formed to formulate a reorganization plan. On January 27, 1938, that committee delivered to the New York Stock Exchange and to the Commission a report recommending sweeping changes in the government of the exchange. This report substituted a paid president and a businesslike governing organization for the old loose committee system of government. It was recognized as an accomplishment of the Commission and as tangible result of the insistence of Mr. Douglas upon meaningful stock exchange reform.

On May 20, 1938, following the adoption of the Conway committee's recommendations by the New York Stock Exchange, Mr. Douglas publicly stated his philosophy of stock-exchange regulation as follows:

> My philosophy was and is that the national securities exchanges should be so organized as to be able to take on the job of policing their members so that it would be unnecessary for the Government to interfere with that business, and that they should demonstrate by action that they were so organized. Now that is something more than cooperation. That is letting the exchanges take the leadership with government playing a residual role. Government would keep the shotgun, so to speak, behind the door, loaded, well oiled, cleaned, ready for use, but with the hope it would never have to be used.

In accordance with that expressed philosophy there were instituted a series of round-table conferences between representatives of the S. E. C. and representatives of the New York Stock Exchange for the purpose of working out the details of regulation embodied in the Conway committee proposals. These conferences have continued up to the present time as part of the Commission's regulatory procedure.

Meanwhile there was taking place a series of events that have become known as "the Whitney case." These began on the morning of March 8, 1938, when Charles R. Gay, then president of the New York Stock Exchange, announced that the firm of Richard Whitney & Co. had been suspended for insolvency. Virtually simultaneously the S. E. C. began its investigation of Richard Whitney and his affairs. On March 17, 1938, Richard Whitney was expelled from the New York Stock Exchange; on April 11 Richard Whitney was sentenced to an indeterminate term of 5 to 10 years in Sing Sing prison on two separate indictments.

It should be noted that the reorganization of the New York Stock Exchange which took place at the insistence of the Commission and of Mr. Douglas was, in effect, a rejection by the exchange membership of the old guard management and the old guard philosophy so long dominated by Richard Whitney and his associates.

The activities of the S. E. C. in general and of Mr. Douglas in particular have been carefully followed in the press by Mr. John T. Flynn, long noted as an outstanding critic of Wall Street. I shall quote from an article by Mr. Flynn appearing in the Scripps-Howard newspapers on March 23, 1939, commenting on the nomination of Mr. Douglas to the Supreme Court. I feel a little guilty in making reference to what one particular newspaperman has said in connection with the nomination of Mr. Douglas, because the entire newspaper profession, and particularly the outstanding newspapermen of Washington, have seemed to rejoice more than any other group over this nomination. They have been close to Mr. Douglas. They are the men who ferret out the weaknesses of men, and are hesitant, because of their training, to applaud until they have an understanding, and because they have a reputation at stake. But I have selected Mr. Flynn because he is recognized by many as an outstanding foe of Wall Street, and possibly to reply through this medium to the Senator from North Dakota. I quote now from Mr. Flynn:

> It is entirely possible that throughout his whole term of office President Roosevelt has made no appointment which will redound more to his fame than the appointment of William O. Douglas to the Supreme Court. * * * There is no man at the bar to whom the President could more safely commit his fame in the future than Douglas. Intellectual and public integrity like Douglas' is often mistaken for radicalism. Men who denounce dishonest bankers and predatory brokers are often called socialists. Of course, radicals do not care anything about making bankers and brokers honest. They wish to sweep them out of existence. * * * Reactionary judges who wink at the depredations of great corporations and bankers may be looked upon as "conservatives" by some, but the true conservative will be the man like Douglas who can see beneath the surface the corrosive and destructive energy in dishonesty in high places.

I should like to say, in conclusion, that it would please me very much, if the publication of the CONGRESSIONAL RECORD were not so expensive, to print therein some of the eulogies which have come from every part of the Nation concerning this nomination. The liberal press, the reform press, the reactionary press, the conservative press, the columnists of every type, writers of every kind, bar associations, organizations of one sort and another, have joined in the almost unanimous acclaim and applause of this admirable and wise selection. I cannot make these things a part of the RECORD; but because this appointment has attracted so much attention at this particular time, when there is a need for an appeasement of business—and who will deny that to be so?—the people are familiar with these articles, these stories.

With the richly romantic life of this young man, who was handed the reins of responsibility in childhood—as a result of a lifetime of tireless energy, usefulness, courage, and brilliance—he now approaches the zenith of his profession, a place on the Supreme Court. I am hopeful that there will be a roll call on the nomination.

I thank the Senate for being so patient and kind with me.

Mr. O'MAHONEY. Mr. President, after the very brilliant speech of the Senator from Connecticut [Mr. MALONEY] it is unnecessary, I am sure, for any other Member of this body to add anything to what has been said about Chairman Douglas. However, I cannot permit the occasion to pass without adding a word, because I suspect that there is no Member of this body, or of the House of Representatives, with the possible exception of the senior Senator from Utah [Mr. KING], who has had more opportunity than I to work with Mr. Douglas and to know personally the high qualifications which he will carry to the Supreme Court.

Mr. President, when it came from the House a year ago there was committed to my care by the chairman of the Committee on the Judiciary the so-called Chandler bill, revising the bankruptcy law, and containing the provisions to which the Senator from Connecticut has alluded with respect to the reorganization of corporations. The Securities and Exchange Commission had done much work in connection with this revision. Chairman Douglas came to the subcommittee over

which I had the honor of presiding. He has likewise served as a member of the Temporary National Economic Committee, representing the Securities and Exchange Commission on that body. I can say without any reservation, with respect to his work on both these committees, that he has displayed the courage, the vision, and the understanding which go to make a real statesman and a real judge.

I should have no hesitation in submitting to Mr. Douglas the issue in any question in which I might be involved, knowing full well, as I would, that he would bring to the settlement and determination of that issue a just mind and a courageous nature which would take him to the very heart of the problem. I cannot help feeling that the criticism which was voiced here today has sprung out of an utter misunderstanding of the situation.

Mr. President, I have had the honor to vote on numerous nominations in the Senate, but in no instance have I voted with greater certainty that the Senate is doing the right thing than in the case of the nomination of Mr. Douglas to be a member of the Supreme Court. I shall vote to confirm the nomination.

The PRESIDING OFFICER. The question is, Will the Senate advise and consent to the nomination of William O. Douglas to be an Associate Justice of the Supreme Court of the United States?

Mr. BARKLEY. I ask for the yeas and nays.

The yeas and nays were ordered, and the Chief Clerk proceeded to call the roll.

Mr. BARKLEY (when Mr. TYDINGS' name was called). The Senator from Maryland [Mr. TYDINGS] is unavoidably detained. I am authorized to say that if he were present he would vote "yea."

The roll call was concluded.

Mr. BYRNES (after having voted in the affirmative). I have a pair with the Senator from Maine [Mr. HALE]. I transfer that pair to the senior Senator from Illinois [Mr. LEWIS], and let my vote stand.

Mr. AUSTIN. The Senator from Wisconsin [Mr. WILEY] and the Senator from Vermont [Mr. GIBSON] are necessarily absent from the Senate. If present, both Senators would vote "yea."

I also announce that the Senator from Minnesota [Mr. SHIPSTEAD], who is necessarily detained, would, if present, vote "yea."

Mr. MINTON. I announce that the Senator from California [Mr. DOWNEY], the Senator from Iowa [Mr. HERRING], the Senator from Oklahoma [Mr. LEE], and the Senator from Florida [Mr. PEPPER] are detained in Government departments. I am advised that if present and voting these Senators would vote "yea."

The Senator from Oklahoma [Mr. THOMAS], the Senator from Missouri [Mr. TRUMAN], the Senator from Illinois [Mr. LUCAS], and the Senator from Idaho [Mr. CLARK] are unavoidably detained. I have been requested to announce that if present and voting these Senators would vote "yea."

The Senator from Montana [Mr. WHEELER] is detained in a meeting of the Committee on Interstate Commerce.

The Senator from West Virginia [Mr. HOLT] is absent because of a death in his family.

The Senator from North Carolina [Mr. BAILEY], the Senator from Virginia [Mr. GLASS], the Senator from Indiana [Mr. VAN NUYS], the Senator from Ohio [Mr. DONAHEY], and the Senator from Massachusetts [Mr. WALSH] are unavoidably detained.

Mr. MCKELLAR (after having voted in the affirmative). I inquire if the senior Senator from Delaware [Mr. TOWNSEND] has voted?

The PRESIDING OFFICER. The Chair is informed the Senator from Delaware has not voted.

Mr. MCKELLAR. I have a pair with the senior Senator from Delaware, which I transfer to the junior Senator from Illinois [Mr. LUCAS], and allow my vote to stand.

Mr. HILL. My colleague the senior Senator from Alabama [Mr. BANKHEAD] is detained from the floor on official business. I am authorized to say that if present he would vote "yea."

Mr. BARKLEY. The senior Senator from Illinois [Mr. LEWIS] is absent on important public business. I am authorized to say that if present he would vote "yea."

Mr. OVERTON. The junior Senator from Louisiana [Mr. ELLENDER] is absent, attending a committee meeting. I am authorized to say that if present he would vote "yea."

The result was announced—yeas 62, nays 4, as follows:

YEAS—62

Adams	Clark, Mo.	Johnson, Colo.	Overton
Andrews	Connally	King	Pittman
Ashurst	Danaher	La Follette	Radcliffe
Austin	Davis	Logan	Reynolds
Barbour	George	Lundeen	Russell
Barkley	Gerry	McCarran	Schwartz
Bilbo	Gillette	McKellar	Schwellenbach
Bone	Green	McNary	Sheppard
Borah	Guffey	Maloney	Smathers
Brown	Gurney	Mead	Smith
Bulow	Harrison	Miller	Stewart
Burke	Hatch	Minton	Taft
Byrd	Hayden	Murray	Thomas, Utah
Byrnes	Hill	Neely	Wagner
Caraway	Holman	Norris	
Chavez	Hughes	O'Mahoney	

NAYS—4

Frazier	Lodge	Nye	Reed

NOT VOTING—30

Bailey	Gibson	Lucas	Vandenberg
Bankhead	Glass	Pepper	Van Nuys
Bridges	Hale	Shipstead	Walsh
Capper	Herring	Thomas, Okla.	Wheeler
Clark, Idaho	Holt	Tobey	White
Donahey	Johnson, Calif.	Townsend	Wiley
Downey	Lee	Truman	
Ellender	Lewis	Tydings	

So the nomination of William O. Douglas, of Connecticut, to be Associate Justice of the Supreme Court of the United States was confirmed.

Mr. BARKLEY. Mr. President, I ask unanimous consent that the President be notified of the confirmation of the nomination of Mr. Douglas.

The PRESIDING OFFICER. Without objection, the President will be notified.

HARRY E. KALODNER

Mr. BARKLEY. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. BARKLEY. I understand that before taking up the Douglas nomination today the Senate completed the Calendar of Executive Business for today, with the exception of one nomination, which was passed over.

The PRESIDING OFFICER. With the exception of one nomination which went over.

Mr. BARKLEY. While we are in executive session let me say that the Senator from Utah [Mr. KING], who had made a motion to reconsider the confirmation of the nomination of Judge Kalodner, has advised me that he does not desire to press his motion. He has advised the Senator from Pennsylvania [Mr. GUFFEY] to the same effect. It is desirable to have that nomination disposed of. I do not see the Senator from Utah in the Chamber, but I am satisfied that that is his wish.

The PRESIDING OFFICER. Without objection, the motion to reconsider will be withdrawn.

Mr. HARRISON. Mr. President, the Senator from Utah [Mr. KING] objected to a nomination from New York. I do not know about the Pennsylvania nomination. Is it still on the calendar?

Mr. BARKLEY. The nomination of Judge Kalodner was confirmed last Friday. The Senator from Utah made a motion to reconsider it.

Mr. HARRISON. The present discussion applies to the Pennsylvania matter?

Mr. BARKLEY. It applies only to the motion to reconsider the Kalodner nomination. The Senator from Utah has indicated to me, and also to the Senator from Pennsylvania, that he does not desire to press the motion.

On the request of the Senator from Utah [Mr. KING], the nomination of Florence Clark Lynch, of New York, to be appraiser of merchandise in the Customs Service, which nomination is on today's Executive Calendar, was passed over. The Senator from Utah is not present in the Chamber

at the moment. I think we should not attempt to pass upon the matter in his absence.

Mr. ASHURST. Mr. President, will the Senator yield to me?

Mr. BARKLEY. I yield.

Mr. ASHURST. I wish to propound a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. ASHURST. Am I correct in understanding that the motion of the Senator from Utah [Mr. KING] to reconsider the nomination of Judge Kalodner has been withdrawn?

The PRESIDING OFFICER. That is correct.

Mr. ASHURST. The nomination having been confirmed last Friday, it would seem appropriate for the Senate to notify the President of the confirmation of the nomination.

The PRESIDING OFFICER. Without objection, the President will be notified.

Mr. HARRISON. The name of the Pennsylvania nominee is Kalodner, is it not?

Mr. GUFFEY. That is correct; Harry E. Kalodner, to be United States district judge for the eastern district of Pennsylvania.

LEGISLATIVE SESSION

Mr. BARKLEY. I move that the Senate resume the consideration of legislative business.

The motion was agreed to; and the Senate resumed legislative session.

MESSAGE FROM THE HOUSE

A message from the House of Representatives, by Mr. Chaffee, one of its reading clerks, announced that the House had passed without amendment the following bills and joint resolution of the Senate:

S. 60. An act for the relief of Dierks Lumber & Coal Co.;

S. 128. An act for the relief of Fred H. Beauregard;

S. 303. An act for the relief of the Ocilla Star;

S. 463. An act for the relief of the Fitzgerald Leader;

S. 512. An act for the relief of certain disbursing officers of the Army of the United States and for the settlement of individual claims approved by the War Department;

S. 529. An act for the relief of Margaret Rose Uncapher, Milton E. Uncapher, Jr., and Andrew G. Uncapher;

S. 584. An act for the relief of John R. Holt;

S. 885. An act to authorize and direct the Comptroller General of the United States to allow credit for all outstanding disallowances and suspensions in the accounts of the disbursing officers or agents of the Government for payments made to certain employees appointed by the United States Employees' Compensation Commission;

S. 1115. An act for the relief of Lt. Malcolm A. Hufty, United States Navy;

S. 1119. An act to provide an additional sum for the payment of a claim under the act entitled "An act to provide for the reimbursement of certain officers and enlisted men or former officers and enlisted men of the Navy and Marine Corps for personal property lost, damaged, or destroyed as a result of the earthquake which occurred at Managua, Nicaragua, on March 31, 1931," approved January 21, 1936 (49 Stat. 2212);

S. 1174. An act for the relief of Alex St. Louis and Dr. J. P. Lake; and

S. J. Res. 46. Joint resolution authorizing appropriation for expenses of a representative of the United States and of his assistants, and for one-half of the joint expenses of this Government and the Government of Mexico, in giving effect to the agreement of November 9–12, 1938, between the two Governments providing for the settlement of American claims for damages resulting from expropriations of agrarian properties since August 30, 1927.

ENROLLED BILLS SIGNED

The message also announced that the Speaker had affixed his signature to the following enrolled bills, and they were signed by the Vice President:

S. 917. An act authorizing the Library of Congress to acquire by purchase, or otherwise, the whole, or any part, of the papers of Charles Cotesworth Pinckney and Thomas Pinckney, including therewith a group of documents relating to the Constitutional Convention of 1787, now in the possession of Harry Stone, of New York City;

S. 1019. An act to authorize the Secretary of War to pay certain expenses incident to the training, attendance, and participation of the equestrian and modern pentathlon teams in the Twelfth Olympic Games; and

S. 1363. An act to repeal subsection (4) of subsection (c) of section 101 of the Agricultural Adjustment Act of 1938.

MISSISSIPPI RIVER BRIDGE NEAR FRIAR POINT, MISS., AND HELENA, ARK.

The PRESIDING OFFICER (Mr. SMATHERS in the chair) laid before the Senate the amendments of the House of Representatives to the bill (S. 964) creating the Arkansas-Mississippi Bridge Commission; defining the authority, power, and duties of said commission; and authorizing said commission and its successors and assigns to construct, maintain, and operate a bridge across the Mississippi River at or near Friar Point, Miss., and Helena, Ark.; and for other purposes.

Mrs. CARAWAY. I move that the Senate disagree to the amendments of the House, ask for a conference with the House on the disagreeing votes of the two Houses thereon, and that the Chair appoint the conferees on the part of the Senate.

The motion was agreed to; and the Presiding Officer appointed Mrs. CARAWAY, Mr. OVERTON, and Mr. VANDENBERG conferees on the part of the Senate.

ADJOURNMENT TO THURSDAY

Mr. BARKLEY. If there is no further business, I move that the Senate adjourn until Thursday next.

The motion was agreed to; and (at 4 o'clock and 50 minutes p. m.) the Senate adjourned until Thursday, April 6, 1939, at 12 o'clock meridian.

CONFIRMATIONS

Executive nominations confirmed by the Senate April 4 (legislative day of April 3), 1939

SUPREME COURT OF THE UNITED STATES

William O. Douglas to be an Associate Justice of the Supreme Court of the United States.

UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

Wiley Blount Rutledge, Jr., to be an associate justice of the United States Court of Appeals for the District of Columbia.

POSTMASTERS

ALABAMA

Eva D. Reid, Vina.

NEBRASKA

Silas J. Anderson, Rosalie.

OKLAHOMA

Joseph S. Austin, Mill Creek.

HOUSE OF REPRESENTATIVES

TUESDAY, APRIL 4, 1939

The House met at 12 o'clock noon.

The Chaplain, Rev. James Shera Montgomery, D. D., offered the following prayer:

O Lord and Master of us all, who cometh with eternity in His heart, we exult that desolation or chaos cannot overwhelm Thee. Without the weapons of carnal strife, fire or blood, Thou wilt lift Thy cross: "I, if I be lifted above the earth, will draw all men unto Me." We thank Thee that Thine arms embrace the whole world and Thy love is as vast as the firmament; nothing unpierced by human thought can cause Thy failure. The angelic hosts make bare Thy sovereignty, and from the lips of little children issue the proclamation of Thy royalty. The shrine of Deity, soiled and despoiled of its sanctity, Thou wilt cleanse and fill with the radiance of Thy holiness; this we pray with a greater passion of entreaty.